RULES

OF THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

EFFECTIVE AS OF AUGUST 1, 1999

E. Barrett Prettyman
United States Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
333 CONSTITUTION AVENUE, NW
WASHINGTON, DC 20001

Clerk's Office Information	**(202) 354-3000**
Clerk, Committee on Grievances	**(202) 354-3320**
Court Reporter	**(202) 273-0882**
Probation Office Information	**(202) 565-1300**

OTHER U.S. COURTHOUSE NUMBERS

Alternative Dispute Resolution Programs	(202) 216-7350
Bankruptcy Court Clerk's Office	(202) 273-0042
Court of Appeals for the D.C. Circuit/Information	(202) 216-7000
Circuit Executive	(202) 216-7340
Marshal's Office Information	(202) 353-0600
Cafeteria	(202) 289-4015
Health Unit	(202) 219-4739

RELATED PHONE NUMBERS

U.S. Attorney's Office Information	(202) 514-7566
D.C. Superior Court Information	(202) 879-1010

COURT PERSONNEL

Chief Judge

Norma Holloway Johnson, Rm. 2315	(202)	354-3500

Active Judges

Thomas Penfield Jackson, Rm. 2429	(202)	354-3310
Thomas F. Hogan, Rm. 4435	(202)	354-3420
Royce C. Lamberth, Rm. 4434	(202)	354-3380
Gladys Kessler, Rm. 6333	(202)	354-3440
Paul L. Friedman, Rm. 6321	(202)	354-3490
Ricardo M. Urbina, Rm. 4311	(202)	354-3390
Emmet G. Sullivan, Rm. 2327	(202)	354-3260
James Robertson, Rm. 6315	(202)	354-3460
Colleen Kollar-Kotelly, Rm. 4323	(202)	354-3340
Henry H. Kennedy, Jr., Rm. 4317	(202)	354-3350
Richard W. Roberts, Rm. 4329	(202)	354-3400

Senior Judges

William B. Bryant, Rm. 6309	(202)	354-3480
Aubrey E. Robinson, Jr., Rm. 4114	(202)	354-3330
June L. Green, Rm. 2333	(202)	354-3250
Thomas A. Flannery, Rm. 2321	(202)	354-3300
Louis F. Oberdorfer, Rm. 2309	(202)	354-3270
Joyce Hens Green, Rm. 6327	(202)	354-3470
Harold H. Greene, Rm. 2114	(202)	354-3230
Stanley S. Harris, Rm. 4335	(202)	354-3410
John Garrett Penn, Rm. 6600	(202)	354-3450
Stanley Sporkin, Rm. 2428	(202)	354-3290

Magistrate Judges

Deborah A. Robinson, Rm. 1205	(202)	354-3070
Alan Kay, Rm. 1426	(202)	354-3030
John M. Facciola, Rm. 4814	(202)	354-3130

Bankruptcy Judge

S. Martin Teel, Jr., Rm. 2106	(202)	273-0708

Clerk of Court

Nancy M. Mayer-Whittington, Rm. 1834	(202)	354-3050

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NOTICE OF RENUMBERED LOCAL RULES

On March 12, 1996, the Judicial Conference of the United States approved the recommendation of the Committee on Rules of Practice and Procedure to "adopt a renumbering system for local rules that corresponds with the relevant Federal Rules of Practice and Procedure."

The text of the Local Rules has not changed, except to correct references to newly renumbered rules and to incorporate new or revised Federal Rules. Local Civil Rules are designated by "LCvR" and Local Criminal Rules by "LCrR." Rules pertaining to the administration of the bankruptcy system carry the prefix "DCt.LBR." This court has made every effort to place (or cross-reference) local rules of court under the appropriate Federal Rules number system. A cross-reference table follows the Table of Contents.

Under the new renumbering format, you will see some general rules, such as practice by attorneys, form and filing of pleadings, and other general rules appearing in more than one place. This was intentional and necessary as a result of elimination of the heading "General Rules" previously found in the old local rules.

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LOCAL RULE CONVERSION CHART

This conversion chart has been created to make it simple to locate new local rules by comparing them to our old rule numbers. The list on the left shows the Local Rule numbers before the adoption of the new numbering system. The numbers on the right reflect the new Local Rule number. Because some of the former rules have been broken up and moved to different locations in the new rules, care should be taken when referring to the rules by their new number. In addition, because some rules apply to both civil and criminal, you will find those rules repeated in both locations.

OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
	TITLE I - GENERAL RULES		
101	SCOPE, CONSTRUCTION AND AMENDMENTS		
	(a) Scope and Construction	LCvR 1.1	LCrR 1.1
	(b) Publication of Amendments	LCvR 83.22	LCrR 57.1
102	CLERK'S OFFICE; CUSTODY AND REMOVAL OF RECORDS		
	(a) Office Hours	LCvR 77.1	LCrR 56.1
	(b) Removal of Records	LCvR 79.1	
103	PHOTOGRAPHY, TAPE RECORDING AND BROADCASTING IN THE COURTHOUSE	LCvR 83.1	LCrR 53.11
104	PRACTICE BY ATTORNEYS		
	(a) Practice by Members of the Bar of This Court	LCvR 83.2(a)	LCrR 44.1(a)
	(b) Appearance as Sole or Lead Counsel in a Contested Evidentiary Hearing or Trial on the Merits	LCvR 83.2(b)	LCrR 44.1(b)
	(c) Practice by Non-Members of the Bar of this Court	LCvR 83.2(c)	LCrR 44.1(c)
	(d) Participation by Non-Members of This Court's Bar in Court Proceedings	LCvR 83.2(d)	LCrR 44.1(d)
	(e) Attorneys Employed by the United States	LCvR 83.2(e)	LCrR 44.1(e)
	(f) Attorneys Employed by a State	LCvR 83.2(f)	
	(g) Attorneys Representing Indigents	LCvR 83.2(g)	
	(h) Entry and Withdrawal of Appearance	LCvR 83.2(h)	LCrR 44.1(f)
	(i) Striking Appearance for Nonattendance at Court Proceedings	LCvR 83.2(i)	LCrR 44.1(g)
	(j) Certification by Non-members of the Bar of This Court	LCvR 83.2(j)	LCrR 44.1(h)
105	NUMBER OF COUNSEL	LCvR 83.3	LCrR 44.2
106	FORM AND FILING OF PLEADINGS AND OTHER PAPERS		
	(a) Place and Manner of Filing	LCvR 5.1(a)	LCrR 49.1(a)
	(b) Correspondence with Court	LCvR 5.1(b)	LCrR 49.1(b)
	(c) Number of Copies	LCvR 5.1(c)	LCrR 49.1(c)
	(d) Electronic Transmission	LCvR 5.1(d)	LCrR 49.1(d)
	(e) Name and Address of Parties and Attorneys	LCvR 5.1(e)	LCrR 49.1(e)
	(f) Form of Papers	LCvR 5.1(f)	LCrR 49.1(f)

OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
	(g) Attachment to Pleadings	LCvR 5.1(g)	
	(h) Verification	LCvR 5.1(h)	LCrR 49.1(g)
	(i) Nonconforming Papers	LCvR 5.1(i)	
	(j) Sealed or Confidential Documents	LCvR 5.1(j)	LCrR 49.1(h)
107	FILING OF DISCOVERY REQUESTS AND RESPONSES		
	(a) Nonfiling of Discovery Materials	LCvR 5.2(a)	
	(b) Filing of Discovery Materials with Motions at Trial	LCvR 5.2(b)	
	(c) Filing for Purpose of Appeal	LCvR 5.2(c)	
108	MOTIONS		
	(a) Statement of Points and Authorities	LCvR 7.1(a)	LCrR 47.1(a)
	(b) Opposing Points and Authorities	LCvR 7.1(b)	LCrR 47.1(b)
	(c) Proposed Order	LCvR 7.1(c)	LCrR 47.1(c)
	(d) Reply Memorandum	LCvR 7.1(d)	LCrR 47.1(d)
	(e) Page Limitations	LCvR 7.1(e)	LCrR 47.1(e)
	(f) Oral Hearings	LCvR 7.1 (f) LCvR 78.1	
	(g) Motions to Vacate Default; Verified Answer	LCvR 7.1(g)	
	(h) Motions for Summary Judgment	LCvR 7.1(h)	
	(i) Motions to Amend Pleadings	LCvR 7.1(i)	LCrR 47.1(g)
	(j) Motions to Intervene	LCvR 7.1(j)	
	(k) Names of Persons to be Served With Proposed Orders, Judgments and Stipulations	LCvR 7.1(j)	LCrR 47.1(h)
109	DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS	LCvR 26.1	
110	PROOF OF SERVICE	LCvR 5.3	LCrR 49.2
111	SCHEDULING AND CONTINUANCES		
	(a) Scheduling	LCvR 16.1(a)	LCrR 57.2(a)
	(b) Continuances	LCvR 16.1(b)	LCrR 57.2(b)
	(c) Notice	LCvR 16.1(c)	LCrR 57.2(c)
112	STIPULATIONS	LcvR 16.6	LCrR 57.3
113	PUBLICATION AND PROOF THEREOF	LCvR 83.23	
114	JURY		
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	(b) Notification of Settlement in Civil Jury Cases	LCvR 47.1(b)	
115	COMMUNICATION WITH A JUROR		
	(a) During a Trial	LCvR 47.2(a)	LCrR 24.2(a)
	(b) After Trial	LCvR 47.2(b)	LCrR 24.2(b)
116	BONDS AND SURETIES	LCvR 65.1.1	LCrR 57.4
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	(b) Student, Program and Supervisor Requirements		
	(1) Student Requirements	LCvR 83.4(b)(1)	LCrR 44.3(b)(1)
	(2) Program Requirements	LCvR 83.4(b)(2)	LCrR 44.3(b)(2)
	(3) Supervisor Requirements	LCvR 83.4(b)(3)	LCrR 44.3(b)(3)
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	(1) Student	LCvR 83.4(c)(1)	LCrR 44.3(c)(1)

OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
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	(3) Supervisor	LCvR 83.4(c)(3)	LCrR 44.3(c)(3)
118	AVOIDANCE AND RESOLUTION OF CONFLICTS IN ENGAGEMENTS OF COUNSEL AMONG THE COURTS IN THE DISTRICT OF COLUMBIA		
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	(b) Priorities in Trial Courts	LCvR 16.2(b)	LCrR 57.5(b)
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119	PRACTICE BY LAW CLERKS AND COURT EMPLOYEES	LCvR 83.5	LCrR 44.4

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203	CLASS ACTIONS	
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	(b) Motion for Certification	LCvR 23.1(b)
	(c) Provisions as to Notice	LCvR 23.1 (c)
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	(c) Applications for Preliminary Injunctions	LCvR 65.1(c)
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	(b) Scheduling Conference and Order	LCvR 16.4(b)
207	DISCOVERY	
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OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
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	(a) General	LCvR 16.4(a)	
	(b) Pretrial Statements	LCvR 16.4(b)	
	(c) Exempted Cases	LCvR 16.4(c)	
	(d) Orders Affecting Content of Pretrial Statements	LCvR 16.4(d)	
	(e) Objections to Depositions and Exhibits	LCvR 16.4(e)	
	(f) Compliance with Federal Rules of Civil Procedure	LCvR 16.4(f)	
210	EXPENSES OF A MASTER	LCvR 53.1	
211	DISMISSAL FOR FAILURE TO PROSECUTE	LCvR 83.17	
212	CUSTODY OF EXHIBITS IN CIVIL CASES	LCvR 79.2	
213	REVIEW OF ORDERS AS TO ADMISSION OF EXCLUSION OF PRACTITIONERS BEFORE THE PATENT OFFICE	LCvR 83.7	
214	TAXATION OF COSTS		
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	(b) Opposition to the Bill of Costs	LCvR 54.1(b)	
	(c) Taxation of Costs by the Clerk	LCvR 54.1(c)	
	(d) Costs Taxable by the Clerk	LCvR 54.1(d)	
	(e) Motion to Retax	LCvR 54.1(e)	
	(f) Costs and Attorney Fees	LCvR 54.1(f)	
215	DETERMINATION OF ATTORNEYS FEES		
	(a) Post-Judgment Conference	LCvR 54.2(a)	
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304	DISCOVERY		LCrR 16.1
305	ISSUANCE OF SUBPOENAS FOR APPOINTED COUNSEL		LCrR 17.1
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OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
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308	RELEASE OF INFORMATION BY ATTORNEYS AND COURT PERSONNEL		
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OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
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503	REFERRAL OF MOTIONS AND PRETRIAL MATTERS TO MAGISTRATE JUDGES		
	(a) Matters Determinable by a Magistrate Judge	LCvR 72.3(a)	
	(b) Motion for Reconsideration of the Magistrate Judges' Ruling	LCvR 72.3(b)	
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504	REFERRAL OF MATTERS FOR HEARING AND RECOMMENDATION BY MAGISTRATE JUDGES		
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	(b) Objection to Recommendations of the Magistrate Judge	LCvR 72.4(b)	LCrR 57.19(b)
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505	REFERRAL OF MISDEMEANOR CASES TO MAGISTRATE JUDGES FOR ALL PURPOSES		
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OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
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	(c) Stay	DCt.LBR 5011-2(c)
	(d) Designation of Record	DCt.LBR 5011-2(d)
	(e) Responses to Motions to Withdraw the Reference; Reply	DCt.LBR 5011-2(e)
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	(a) Form of Request; Time and Place for Filing	DCt.LBR 9033-1(a)
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701.1	RENEWAL OF MEMBERSHIP		
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OLD LOCAL RULE NAME AND NUMBER		NEW CIVIL NUMBER	NEW CRIMINAL NUMBER
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703	RULES OF DISCIPLINARY ENFORCEMENT		
	(a) Promulgation of Rules	LCvR 83.12(a)	LCrR 57.23(a)
	(b) Attorneys Subject to Rules	LCvR 83.12(b)	LCrR 57.23(b)
704	DISCIPLINARY PANEL		
	(a) Appointment	LCvR 83.13(a)	LCrR 57.24(a)
	(b) Powers of Individual Judges	LCvR 83.13(b)	LCrR 57.24(b)
705	COMMITTEE ON GRIEVANCES		
	(a) Appointment	LCvR 83.14(a)	LCrR 57.25(a)
	(b) Duties	LCvR 83.14(b)	LCrR 57.25(b)
	(c) Clerk	LCvR 83.14(c)	LCrR 57.25(c)
	(d) Confidentiality and Immunity	LCvR 83.14(d)	LCrR 57.25(d)
706	OBLIGATIONS OF ATTORNEYS		
	(a) Rules of Professional Conduct	LCvR 83.15(a)	LCrR 57.26(a)
	(b) Duty to Notify the Court	LCvR 83.15(b)	LCrR 57.26(b)
	(c) Changes in Address	LCvR 83.15(c)	LCrR 57.26(c)
	(d) Duties of the Clerk Upon Notification	LCvR 83.15(d)	LCrR 57.26(d)
707	GROUNDS AND PROCEDURES FOR DISCIPLINE		
	(a) Service of Process	LCvR 83.16(a)	LCrR 57.27(a)
	(b) Attorneys Convicted of Crimes	LCvR 83.16(b)	LCrR 57.27(b)
	(c) Discipline Imposed by Other Courts	LCvR 83.16(c)	LCrR 57.27(c)
	(d) Complaints of Misconduct Filed in this Court	LCvR 83.16(d)	LCrR 57.27(d)
	(e) Disbarment on Consent	LCvR 83.16(e)	LCrR 57.27(e)
708	NOTIFICATION TO DISCIPLINARY AUTHORITIES		
	(a) Notification to Other Courts	LCvR 83.18(a)	LCrR 57. 28(a)
	(b) Notification to National Discipline Data Bank	LCvR 83.18(b)	LCrR 57.28(b)
709	REINSTATEMENT		
	(a) After Disbarment or Suspension	LCvR 83.19(a)	LCrR 57.29(a)
	(b) Time of Application Following Disbarment Suspension for Indefinite Period	LCvR 83.19(b)	LCrR 57.29(b)
	(c) Hearing on Application	LCvR 83.19(c)	LCrR 57.29(c)
	(d) Conditions of Reinstatement of Termination of Suspension	LCvR 83.19(d)	LCrR 57.29(d)
	(e) Successive Petitions	LCvR 83.19(e)	LCrR 57.29(e)
	(f) Notification of Reinstatement	LCvR 83.19(f)	LCrR 57.29(f)
710	PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE MENTALLY INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED		
	(a) Attorneys Declared Incompetent or Physically Infirm	LCvR 83.20(a)	LCrR 57.31(a)
	(b) Attorneys Alleged to be Incapacitated	LCvR 83.20(b)	LCrR 57.31(b)
	(c) Claim of Disability During Disciplinary Proceedings	LCvR 83.20(c)	LCrR 57.31(c)
	(d) Application of Reinstatement	LCvR 83.20(d)	LCrR 57.31(d)
	(e) Evidentiary Hearing	LCvR 83.20(e)	LCrR 57.31(e)
711	COUNSELING		
	(a) Referral of Attorneys for Counseling	LCvR 83.21(a)	LCrR 57.31(a)
	(b) The Counseling Panel	LCvR 83.21(b)	LCrR 57.31(b)
	(c) Panel Proceedings	LCvR 83.21(c)	LCrR 57.31(c)
	(d) Confidentiality and Immunity	LCvR 83.21(d)	LCrR 57.31(d)

CIVIL RULES

LCvR 1.1

SCOPE, CONSTRUCTION AND AMENDMENTS

(a) SCOPE AND CONSTRUCTION.

These rules govern all proceedings in the United States District Court for the District of Columbia. These rules supplement the Federal Rules of Civil and Criminal Procedure and shall be construed in harmony therewith.

(b) PUBLICATION OF AMENDMENTS.

Any amendment to these rules shall be published in The Daily Washington Law Reporter before its adoption. The notice shall state that the proposed amendment will be adopted unless modified or withdrawn after receiving comments from organized bar associations, members of the bar, and the public. Such comments shall be submitted in writing within 45 days of publication to the Chairman of the Advisory Committee on District Court Rules. If the court determines there is an immediate need for a particular local rule or amendment to an existing local rule, it may proceed without public notice and opportunity for comment, but the court shall promptly thereafter afford such notice and opportunity for comment.

COMMENT TO LCvR 1.1(b) AS AMENDED 10/10/90: *This amendment brings the rule in compliance with 28 U.S.C. §2071(e) which permits the court to dispense with notice and comment if the court "determines that there is an immediate need for a [local] rule" and if the court "promptly thereafter afford[s] such notice and opportunity for comment."*

LCvR 5.1

FORM AND FILING OF PLEADINGS AND OTHER PAPERS

(a) PLACE AND MANNER OF FILING.

All papers relating to a pending action shall be filed with the Clerk unless otherwise directed by the court.

(b) CORRESPONDENCE WITH COURT.

Except when requested by a judge, correspondence shall not be directed by the parties or their attorneys to a judge, nor shall papers be left with or mailed to a judge for filing.

(c) NUMBER OF COPIES.

The original and one copy of every pleading, motion or other paper shall be filed with the Clerk.

(d) ELECTRONIC TRANSMISSION.

No pleading, motion or other document shall be transmitted to the Clerk for filing by means of electronic facsimile transmission except with express leave of Court.

(e) NAME AND ADDRESS OF PARTIES AND ATTORNEYS.

The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party. Where a person is sued in an official capacity, the person's official address shall be used. If the party is appearing *pro se,* the caption shall also include the party's telephone number. Those filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each party. Failure to provide the address information within 30 days upon filing may result in the dismissal of the case against the defendant All papers signed by an attorney shall contain the name, address, telephone number, and bar identification number of the attorney. Notice of a change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 10 days of the change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.

(f) FORM OF PAPERS.

All papers shall be typed (double spaced) or reproduced by any duplicating or copying process that produces a clear black image on opaque white paper 11 inches long and 8-1/2 inches wide, unfolded, without back or cover, fastened at the top. Every paper shall contain a heading under the caption describing the nature of the pleading, motion or other paper. Papers should also be punched at the top with two holes, 2 3/4 inches apart and 3/8 inch from the top, to facilitate insertion in the file jacket. The case number on every paper shall be followed by the initials of the judge to whom the case has been assigned. If the case has been referred to a magistrate judge, the magistrate

judge's initials shall also be shown. All exhibits or attachments to papers should reflect the number of the case in which they are filed.

(g) ATTACHMENTS TO PLEADINGS.

No complaint, amended complaint, counterclaim, cross claim or third party complaint shall have appended thereto any document that is not essential to determination of the action. Whenever any such pleading is sought to be filed with an attached document, the Clerk shall bring this rule to the attention of the person filing the pleading.

(h) VERIFICATION.

Whenever any matter is required or permitted by law or by rule to be supported by the sworn written statement of a person (other than a deposition, oath of office, or oath required to be taken before a specified official other than a notary public), the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form:

(l) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(i) NONCONFORMING PAPERS.

A paper that does not conform to the requirements of this rule and Rule 10(a) of the Federal Rules of Civil Procedure shall not be accepted for filing.

COMMENT TO LCvR 5.1(d): *Rule 5 of the Federal Rules of Civil Procedure was amended effective December 1, 1991 to allow district courts to enact local rules permitting filing of papers by facsimile. These amendments provide, however, that such local rules may be adopted only if "authorized by and consistent with standards established by the Judicial Conference of the United States." The Conference has*

concluded that routine filing by facsimile at this time would place an undue administrative and resource burden on the courts. This rule precludes such filing absent express leave of Court.

(j) SEALED OR CONFIDENTIAL DOCUMENTS

(1) Absent statutory authority, no cases or documents may be sealed without an order from the Court. Any pleading filed with the intention of being sealed shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed in the public record.

(2) Unless otherwise ordered or otherwise specifically provided in the these Local Rules, all documents submitted for a confidential *in camera* inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope/box needed to accommodate the documents. The envelope/box containing such documents shall contain a conspicuous notation that carries "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(3) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope/box shall also contain the date of nay order, or the reference to any statute permitting the item sealed.

(4) Filings of sealed materials must be made in the Clerk's Office during the business hours of 9:00 a.m. and 4:00 p.m. daily except Saturdays, Sundays and legal holidays. Filings at the security desk are prohibited because the Security Officers are not authorized to accept this material.

LCvR 5.2

FILING OF DISCOVERY REQUESTS AND RESPONSES

(a) NONFILING OF DISCOVERY MATERIALS.

Except as otherwise provided by this rule, interrogatories, depositions, requests for documents, requests for admissions, and answers and responses thereto shall be served upon other counsel and parties but shall not be filed with the Clerk except upon order of the Court as required below. The party responsible for service of the

discovery material shall retain the original and become its custodian and, with respect to depositions, the deposing party shall retain the original deposition and become its custodian and shall make it available for inspection by any party to the action upon request. The Court may in its discretion order that all or any portion of discovery materials in a particular case be filed with the Clerk.

(b) FILING OF DISCOVERY MATERIALS WITH MOTIONS AND AT TRIAL.

Any motion concerning discovery matters shall be accompanied by a copy of, or shall set forth verbatim, the relevant portion of any nonfiled discovery materials to which the motion is addressed. Discovery materials may be used and filed as exhibits or evidence in support of any motion or at a trial or evidentiary hearing in accordance with the Federal Rules of Evidence.

(c) FILING FOR PURPOSE OF APPEAL.

When discovery materials not previously in the record are needed for the purpose of an appeal, they may be filed with the Clerk by stipulation of counsel or upon application to and order of the court.

LCvR 5.3

PROOF OF SERVICE

Proof of service of papers required or permitted to be served, other than those for which a different method of proof is prescribed by the Federal Rules of Civil Procedure or by statute, shall be filed with such papers. The proof shall show the date and manner of service, and may be by certificate of an attorney of record or other proof satisfactory to the court. Failure to make proof of service does not affect the validity of service. The court may at any time allow the proof to be amended or supplied, unless to do so would unfairly prejudice a party.

LCvR 7.1

MOTIONS

(a) STATEMENT OF POINTS AND AUTHORITIES.

Each motion shall include or be accompanied by a statement of the specific points of law and authority that support the motion, including where appropriate a concise statement of facts. If a table of cases is provided, counsel shall place asterisks in the margin to the left of those cases or authorities on which counsel chiefly relies.

(b) OPPOSING POINTS AND AUTHORITIES.

Within 11 days of the date of service or at such other time as the court may direct, an opposing party shall serve and file a memorandum of points and authorities in opposition to the motion. If such a memorandum is not filed within the prescribed time, the court may treat the motion as conceded.

(c) PROPOSED ORDER.

Each motion and opposition shall be accompanied by a proposed order.

(d) REPLY MEMORANDUM.

Within five days after service of the memorandum in opposition the moving party may serve and file a reply memorandum.

(e) PAGE LIMITATIONS.

A memorandum of points and authorities in support of or in opposition to a motion shall not exceed 45 pages and a reply memorandum shall not exceed 25 pages, without prior approval of the court. Documents that fail to comply with this provision shall not be filed by the Clerk.

(f) ORAL HEARINGS.

A party may in a motion or opposition request an oral hearing, but its allowance shall be within the discretion of the court. If at the time of the hearing the moving party fails to appear, the court may treat the motion as withdrawn; if the opposing party fails to appear, the court may treat the motion as conceded.

(g) MOTIONS TO VACATE DEFAULT; VERIFIED ANSWER.

A motion to vacate an entry of default, or a judgment by default, or both, shall be accompanied by a verified answer presenting a defense sufficient to bar the claim in whole or in part.

(h) MOTIONS FOR SUMMARY JUDGMENT.

Each motion for summary judgment shall be accompanied by a statement of material facts as to which the moving party contends there is no genuine issue, which shall include references to the parts of the record relied on to support the statement. An opposition to such a motion shall be accompanied by a separate concise statement of

genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, which shall include references to the parts of the record relied on to support the statement. Each such motion and opposition must also contain or be accompanied by a memorandum of points and authorities required by sections (a) and (b) of this rule. In determining a motion for summary judgment, the court may assume that facts identified by the moving party in its statement of material facts are admitted, unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion.

(i) MOTIONS TO AMEND PLEADINGS.

A motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended. The amended pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

(j) MOTION TO INTERVENE.

A motion to intervene as a party pursuant to Rule 24(c), Federal Rules of Civil Procedure, shall be accompanied by an original of the pleading setting forth the claim or defense for which intervention is sought. The pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

(k) NAMES OF PERSONS TO BE SERVED WITH PROPOSED ORDERS, JUDGMENTS AND STIPULATIONS.

Each proposed order, judgment and stipulation shall have appended to it or endorsed upon it a list of the names and addresses of all attorneys entitled to be notified of its entry. If a party is not represented by an attorney, the name and address of the party shall be included.

(l) TIME FOR FILING DISPOSITIVE MOTIONS.

A dispositive motion in a civil action shall be filed sufficiently in advance of the pretrial conference that it may be fully briefed and ruled on before the conference.

(m) DUTY OF COUNSEL TO CONFER ON NONDISPOSITIVE MOTIONS.

Before filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel, either in person or by telephone, in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. A party shall include in its

motion a statement that the required discussion occurred, and a statement as to whether the motion is opposed.

COMMENT TO LCvR 7.1: *Subsections (l) and (m) to LCvR 7.1 are new. They implement Section 6c and (D) of the Civil Justice Expense and Delay Reduction Plan. The statement that a conference has been held, and the result of the conference, may be made either in the body of the motion or in a separate certificate of counsel.*

LCvR 9.1

APPLICATIONS FOR A STATUTORY THREE-JUDGE COURT

In every case in which by statute a Three-Judge Court is required, there shall be filed with the complaint a separate document entitled "Application for Three-Judge Court," together with a memorandum of points and authorities in support of the application. Upon the convening of a Three-Judge Court, each party shall submit to the Clerk two additional copies of all pleadings and papers previously filed by the party, and all subsequent filings shall be in quadruplicate.

LCvR 9.2

HABEAS CORPUS PETITIONS, SECTION 1983 COMPLAINTS, AND SECTION 2255 MOTIONS

Petitions for a *writ of habeas corpus* and complaints pursuant to 42 U.S.C. §1983 filed by a petitioner incarcerated in the District of Columbia or in Lorton Reformatory, and motions filed pursuant to 28 U.S.C. §2255 (attacking a sentence imposed by the court), must be filed on standard forms to be supplied upon request to the petitioner or plaintiff by the Clerk without cost. Counsel filing a petition for a *writ of habeas corpus*, a complaint under 42 U.S.C. §1983, or a motion under 28 U.S.C. §2255 need not use a standard form, but any such petition, complaint or motion shall contain essentially the same information set forth on the standard form.

COMMENT TO LCvR 9.2: *The fee for filing a new civil action was increased on December 18, 1996 to $150; therefore, the criterion for disallowing* in forma pauperis *status if the prison account was $100 is no longer valid.*

LCvR 11.1

NAMES AND ADDRESS OF PARTIES AND ATTORNEYS

The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party. Where a person is sued in an official capacity, the person's official address shall be used. If the party is appearing *pro se*, the caption shall also include the party's telephone number. Those filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each party. Failure to provide the address information within 30 days upon filing may result in the dismissal of the case against the defendant. All papers signed by an attorney shall contain the name, address, telephone number, and bar identification number of the attorney. Notice of change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 10 days of the change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.

LCvR 11.2

VERIFICATION

Whenever any matter is required or permitted by law or by rule to be supported by the sworn written statement of a person (other than a deposition, oath of office, or oath required to be taken before a specified official other than a notary public), the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form:

(l) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

LCvR 15.1

MOTIONS TO AMEND PLEADINGS

A motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended. The amended pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

LCvR 16.1

SCHEDULING AND CONTINUANCES

(a) SCHEDULING.

All hearings, conferences and trials shall be scheduled by the judge to whom the case is assigned, except that matters referred to a magistrate judge shall be scheduled by the magistrate judge.

(b) CONTINUANCES.

No application for a continuance of a hearing, conference or trial shall be made unless notice of the application has been given to all other parties. An application for a continuance shall be ruled upon by the judge or magistrate judge before whom the hearing, conference or trial is to be held.

(c) NOTICE.

The Clerk shall give notice to counsel of every matter set by the court, unless the matter is scheduled orally in open court in the presence of counsel for all parties, in which case further notice is not required. All scheduling orders pursuant to Rule 16(b), Federal Rules of Civil Procedure must be in writing.

LCvR 16.2

AVOIDANCE AND RESOLUTION OF CONFLICTS IN ENGAGEMENTS OF COUNSEL AMONG THE COURTS IN THE DISTRICT OF COLUMBIA

The following provisions, which implement the "Procedures for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia" dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, shall apply to matters scheduled in this Court:

(a) PRIORITY TO BE ACCORDED APPELLATE COURTS.

Trial proceedings in this court will yield, and if under way will be held in abeyance, during argument by trial counsel in an appellate court.

(b) PRIORITIES IN TRIAL COURTS.

Actual trials of civil or criminal cases in this court or in the Superior Court will be accorded priority over any nontrial matters in either court. For the purpose of this rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section c of this Rule, counsel should have more than one trial set on one day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judge will be receptive to counsel's application for a change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(4) The judges of this court insofar as practical, will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this court will attempt to accommodate these situations by recognizing the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) RESPONSIBILITIES OF COUNSEL.

It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled. They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave three open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for, or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance notify by telephone the judge's courtroom deputy of that fact, the reason therefore and the nature and duration of the conflicting engagements.

(5) If an attorney has a criminal felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that day or for any date thereafter during which that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than one other misdemeanor case for trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by this Rule.

LCvR 16.3

DUTY TO MEET AND CONFER

(a) TIME FOR MEETING OF PARTIES.

Counsel (including any nonprisoner *pro se* party) shall meet and confer in person or, if all parties consent, by telephone, in accordance with this Rule and Rule 26(f), Federal Rules of Civil Procedure, within 15 days after the defendant's appearance or first filing in the form of an answer or motion. In a case involving multiple defendants, the 15-day period shall run from the date of appearance or first filing in the form of an answer or motion, pursuant to Rule 12, Federal Rules of Civil Procedure, by the defendant who is given the longest time to answer under the Federal Rules of Civil Procedure. Any party may move to extend the deadline to a time fixed by the court on the ground that another defendant has not been served or has not yet appeared in the case, or for other sufficient reason.

(b) CASES EXEMPTED FROM REQUIREMENT OF MEETING.

The requirement of this Rule, of LCvR 16.3 of these Rules, and of Rules 16(b) and 26(f), Federal Rules of Civil Procedure, shall not apply in a case filed by or against a prisoner appearing *pro se*, or in any case filed by a nonprisoner *pro se* plaintiff in which a dispositive motion is filed before the deadline for the meeting expires. Discovery in exempted cases may commence at the time the meeting would be required to be held pursuant to this Rule if the case were not exempted.

(c) MATTERS TO BE DISCUSSED BY THE PARTIES.

At the meeting required by this Rule, the parties shall discuss the following matters:

(1) The case tracking category in which the case should be placed; whether the case is likely to be disposed of by dispositive motion; and whether, if a dispositive motion has already been filed, the parties should recommend to the court that discovery or other matters should await a decision on the motion.

(2) The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.

(3) Whether the case should be assigned to a magistrate judge for all purposes, including trial.

(4) Whether there is a realistic possibility of settling the case.

(5) Whether the case could benefit from the Court's alternative dispute resolution (ADR) procedures (or some other form of ADR); what related steps should be taken to facilitate such ADR; and whether counsel have discussed ADR and their response to this provision with their clients. In assessing the above, counsel shall consider:

(i) the client’s goals in bringing or defending the litigation;

(ii) whether settlement talks have already occurred and, if so, why they did not produce an agreement;

(iii) the point during the litigation when ADR would be most appropriate, with special consideration given to:

(aa) whether ADR should take place after the informal exchange or production through discovery of specific items of information; and

(bb) whether ADR should take place before or after the judicial resolution of key legal issues;

(iv) whether the parties would benefit from a neutral evaluation of their case, which could include suggestions regarding the focus of discovery, the legal merits of the claim, an assessment of damages and/or the potential settlement value of the case; and

(v) whether cost savings or any other practical advantages would flow from a stay of discovery or of other pre-trial proceedings while an ADR process is pending.

(6) Whether the case can be resolved by summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

(7) Whether the parties should stipulate to dispense with the initial disclosures required by Rule 26(a)(1), F.R.Civ.P., and if not, what if any changes should be made in the scope, form or timing of those disclosures.

(8) The anticipated extent to discovery, how long discovery should take, what limits should be placed on discovery (*e.g.*, number of interrogatories, number of depositions, duration of depositions); whether a protective order is appropriate; and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

(9) Whether the requirement of exchange of expert witness reports and information pursuant to Rule 26(a)(2), F.R.Civ.P., should be modified, and whether and when depositions of experts should occur.

(10) In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or an evidentiary hearing on the motion and a proposed date for decision.

(11) Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

(12) The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).

(13) Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

(d) REPORT TO THE COURT.

Not later than 10 days following the meeting required by this Rule, the parties shall file with the court a succinct statement of all agreements reached with respect to any of the 13 matters set forth in paragraph (c), a description of the positions of each party on any matters as to which they disagree, and a proposed scheduling order. The statement shall be filed jointly, but the parties may submit alternative proposed orders that reflect any disagreements. The plaintiff shall have the duty to ensure timely filing of the report. If, by the time the report is due, any defendant has not responded to the plaintiff's proposed report or declines to join in the report, the plaintiff shall certify in the report that efforts were made to secure that defendant's participation.

COMMENT TO LCvR 16.3: *This rule implements Rule 16(b) and Rule 26(f), F.R.Civ.P., and Section 3 of the Civil Justice Expense and Delay Reduction Plan. Item 7 of the matters to be discussed at the conference of counsel has been added to the list set forth in the Plan, and items 8 and 9 have been modified, to take account of recent amendments to Rule 26, F.R.Civ.P.*

APPLICABILITY TO PENDING CASES:

This rule is applicable to all cases pending on March 1, 1994, as to which the deadline for the meeting has not been reached by that date.

LCvR 16.4

CASE TRACKING AND SCHEDULING ORDERS

(a) CASE TRACKS.

Each civil action shall be assigned to one of the following tracks for case management purposes:

(1) The Fast Track, to include all cases that can be disposed of promptly.

(2) The Standard Track, to include all cases that are relatively routine.

(3) The Complex Track, to include cases that are complex because of the subject matter, the number of parties, the need for extended discovery or other reasons.

(b) SCHEDULING CONFERENCE AND ORDER.

After receiving the report of the parties pursuant to LCvR 26.2 of these Rules, the court will hold a scheduling conference unless it determines, on the basis of the report, that a conference is unnecessary. At or after the conference, or after receiving the report of the parties where no conference is held, the court will issue a scheduling order governing future proceedings in accordance with Rule 16(b), Federal Rules of Civil Procedure. The Scheduling Order will include the track to which the case is assigned, and the limits if any on the number of interrogatories, the number and duration of depositions, and the use of other forms of discovery. The court may change the track assignment of a case, or modify the scheduling order, at any time upon a showing of good cause.

COMMENT TO LCvR 16.4: *This Rule is new. It implements Sections 2 and 4 of the Civil Justice Expense and Delay Reduction Plan, and Rule 16(b) of the F.R.Civ.P. as amended in December 1993. The track assignment made pursuant to this Rule determines presumptive limits on the number of depositions and interrogatories that are provided in LCvR 26.3.*

LCvR 16.5

PRETRIAL STATEMENTS

(a) GENERAL.

(l) In any case scheduled for trial or evidentiary hearing the court may order a final Pretrial Conference before the court or a magistrate judge. Trial counsel for each party must be present at the final Pretrial Conference unless the court authorizes otherwise.

(2) Not less than eleven days prior to the final Pretrial Conference, each party shall file and serve on every other party a Pretrial Statement, in the form prescribed by subparagraph (b) of this Rule. Amendments to a party's Pretrial Statement shall be permitted for excusable neglect until entry by the court or magistrate judge of a final Pretrial Order.

(3) As soon as practicable following the final Pretrial Conference the court or magistrate judge shall enter a final Pretrial Order which shall govern the trial of the case. The final Pretrial Order may incorporate, in whole or part, the parties' Pretrial Statements. Objections to the final Pretrial Order shall be promptly made, and shall be determined by the court before trial. Thereafter no departures from the final Pretrial Order shall be permitted except to prevent manifest injustice.

(b) PRETRIAL STATEMENTS.

(l) A party's Pretrial Statement shall contain the following:

(i) a statement of the case;

(ii) a statement of claims made by the party;

(iii) a statement of defenses raised by the parties;

(iv) a schedule of witnesses to be called by the party;

(v) a list of exhibits to be offered in evidence by the party;

(vi) a designation of depositions, or portions thereof, to be offered in evidence by the party;

(vii) an itemization of damages the party seeks to recover; and

(viii) a request for other relief sought by the party.

(2) The statement of the case shall set forth a brief description of the nature of the case, the identities of the parties, and the basis of the court's jurisdiction.

(3) The statement of claims shall set forth each claim a party has against any other party (including counter-, cross-, and third-party claims), and the party or parties against whom the claim is made.

(4) The statement of defenses shall set forth each defense a party interposes to a claim asserted against it by any other party, including defenses raised by way of general denial, without regard to which party has the burden of persuasion.

(5) The schedule of witnesses shall set forth the full names and addresses of all witnesses the party may call if not earlier called by another party, separately identifying those whom the party expects to present and those whom the party may call if the need arises including rebuttal witnesses. The schedule shall also set forth a brief description of the testimony to be elicited from the witness; and an estimate of the time the party will take in eliciting such testimony. Expert witnesses shall be designated by an asterisk. A party need not list any witness who will be called solely for impeachment purposes.

No objection shall be entertained to a witness or to testimony on the ground that the witness or testimony was disclosed for the first time in a party's Pretrial Statement, unless the party objecting has unsuccessfully sought to learn the identity of the witness or the substance of the testimony by discovery, and the court or magistrate judge finds the information to have been wrongfully withheld.

(6) The list of exhibits shall set forth a description of each exhibit the party may offer in evidence (other than those created at trial), separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Exhibits shall be listed by title and date. Exhibits will be presumed to be authentic unless objection to their authenticity is made at or before the final Pretrial Conference and the objection is sustained.

(7) The designation of depositions shall identify each deposition or portion thereof (by page and line numbers) the party intends to offer in evidence. Any cross-designation sought by any other party pursuant to Rule 106, Federal Rules of Evidence, must be made at or before the final Pretrial Conference.

(8) The itemization of damages shall set forth separately each element of damages, and the monetary amount thereof, the party claims to be entitled to recover of any other party, including prejudgment interest, punitive damages and attorneys' fees. No monetary amount need be set forth for elements of intangible damage *(e.g.*, pain and suffering, mental anguish, or loss of consortium).

(9) The request for other relief shall set forth all relief, other than judgment for a sum of money, the party claims to be entitled to receive against any other party.

(c) EXEMPTED CASES.

The following categories of actions are exempt from this Rule:

(l) Actions brought pursuant to the Freedom of Information Act;

(2) Petitions for *writ of habeas corpus* brought by a petitioner incarcerated in the District of Columbia or in Lorton Reformatory;

(3) Motions filed pursuant to 28 U.S.C. section 2255;

(4) All other petitions brought by prisoners incarcerated in federal facilities, in the District of Columbia, or in Lorton Reformatory;

(5) Appeals from bankruptcy decisions;

(6) All actions brought by the United States to collect student loans or other debts owed to the United States Government.

(7) Actions involving the review of Social Security benefit denials;

(8) All applications for attorneys' fees and costs;

(9) Multi-district litigation;

(10) Condemnation proceedings;

(11) Forfeiture actions by the United States;

(12) Appeals from a decision by a United States Magistrate Judge; and

(13) Motions to quash or enforce administrative subpoenas.

(d) ORDERS AFFECTING CONTENT OF PRETRIAL STATEMENTS.

Nothing in this rule shall preclude the court in a particular case from entering an order requiring the parties to submit, in addition to the foregoing contents of pretrial statements, the following:

(l) Stipulations of fact agreed upon or proposed by the parties;

(2) A trial brief incorporating a concise statement of law supporting the party's claims or defenses, and addressing any unusual issues of fact or evidence not already submitted to the court;

(3) In jury cases, proposed voir dire questions, jury instructions and verdict forms;

(4) In nonjury cases, proposed findings of fact and conclusions of law; and

(5) A joint pretrial statement.

(e) OBJECTIONS TO DEPOSITIONS AND EXHIBITS.

The statement of objections to the use of depositions and to the admissibility of exhibits required by Rule 26(a)(3), Federal Rules of Civil Procedure, shall be filed at or before the pretrial conference.

(f) COMPLIANCE WITH FEDERAL RULES OF CIVIL PROCEDURE.

Compliance with the requirements of this Rule shall constitute full compliance with Rules 26(a)(3) and (4), Federal Rules of Civil Procedure. Those rules shall apply, however, in cases exempted from this Rule.

COMMENT TO LCvR 16.5: *The changes in this rule are made to conform to the recent amendments to Rule 26(a)(3), Federal Rules of Civil Procedure. Categories of cases exempted from this Rule are <u>not</u> exempted from the scheduling order provisions of Rule 16(b), F.R.Civ.P., and LCvR 16.3 of these Rules.*

LCvR 16.6

STIPULATIONS

A stipulation need not be considered by the court unless it is in writing and signed by the parties thereto or their attorneys, or stenographically recorded in court or during a deposition

LCvR 23.1

CLASS ACTIONS

(a) CLASS ACTION ALLEGATIONS.

In any case sought to be maintained as a class action, the complaint shall contain under a separate heading styled "Class Action Allegations":

(l) A reference to the portion or portions of Rule 23, Federal Rules of Civil Procedure, under which the suit is claimed properly to be maintainable as a class action.

(2) Appropriate allegations justifying such claim, including, but not necessarily limited to:

(i) the size (or approximate size) and definition of the alleged class;

(ii) the basis upon which the plaintiff claims to be an adequate representative of the class, or if the class is comprised of defendants, that those named as parties are adequate representatives of the class;

(iii) the alleged questions of law and fact claimed to be common to the class; and

(iv) in actions claimed to be maintainable as class actions under Rule 23(b)(3) of the Federal Rules of Civil Procedure, allegations supporting the findings required by that subdivision.

(b) MOTION FOR CERTIFICATION.

Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, unless the court in the exercise of its discretion has extended this period, the plaintiff shall move for a certification under Rule 23(c)(1), Federal Rules of Civil Procedure, that the case may be so maintained. In ruling upon the motion, the court may allow the action to be so maintained, may deny the motion, or may order that a ruling be postponed pending discovery or other appropriate preliminary proceedings.

A defendant may move at any time to strike the class action allegations or to dismiss the complaint.

(c) PROVISIONS AS TO NOTICE.

In an action maintained under Rule 23(b)(3) of the Federal Rules of Civil Procedure, the plaintiff shall include in the motion for certification a statement proposing (l) how, when, by whom, and to whom the notice required by Rule 23(c)(2) shall be given, (2) how and by whom payment therefor is to be made, and (3) by whom the response to the notice is to be received. In lieu of such a statement the movant may state reasons why a determination of these matters cannot then be made, and offer a proposal as to when the determination should be made. In certifying a class action as maintainable under Rule 23(b)(3), the court may include in its order the provisions for notice pursuant to Rule 23(c)(2) or may postpone a determination of the matter.

(d) APPLICABILITY TO COUNTERCLAIMS AND CROSS-CLAIMS.

The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross claim alleged to be brought for or against a class.

COMMENT TO LCvR 23.1(b) AS AMENDED 10/10/90: *This amendment makes clear that the court may enlarge the 90-day period within which the motion for certification is to be filed.*

LCvR 26.1

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

In all civil, agency, or criminal cases where a corporation is a party or intervenor, counsel of record for that party or intervenor shall file a certificate listing any parent, subsidiary or affiliate of that party or intervenor which, to the knowledge of counsel, has any outstanding securities in the hands of the public. Such certificate shall be filed at the time the party's first pleading is filed. The purpose of this certificate is to enable the judges of this court to determine the need for recusal. Counsel shall have the continuing obligation to advise the court of any change. The form of the certificate is:

"Number and Title of Case"

Certificate required by LCvR 26.1 of the Local Rules of the United States District Court for the District of Columbia:

I, the undersigned, counsel of record for _____, certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of _____ which have any outstanding securities in the hands of the public.

(Here list all such parent companies, subsidiaries and affiliates of the corporation.)

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record for _____

LCvR 26.2

DISCOVERY

(a) INITIAL DISCLOSURE REQUIREMENTS.

Unless otherwise provided by the court in its scheduling order, the requirements of Rule 26(a)(1), Federal Rules of Civil Procedure, for initial disclosure of information are applicable in all cases except for cases assigned to the Complex Track, and cases exempted in LCvR 26.2(b) of these Rules or by order of the court. The time for making initial disclosures shall be 10 days after the entry of the scheduling order pursuant to LCvR 16.3, unless the parties agree or the court directs a different date

(b) PRESUMPTIVE LIMITS ON INTERROGATORIES AND DEPOSITIONS.

Whether and to what extent limitations shall be placed on the permitted number of interrogatories and depositions will be determined by the court in the scheduling order and may thereafter be changed on motion of the parties or the court's own motion. When the scheduling order sets limits different from those contained in Rules 30(a)(2)(A) and 33(a), Federal Rules of Civil Procedure, the scheduling order shall govern. The following presumptive limits will be applied by the court unless there appears good reason to depart from them:

Fast Track cases: 12 interrogatories by each party and 3 depositions by each side.

Standard Track cases: 25 interrogatories by each party and 5 depositions by each side.

Complex Track cases: 25 interrogatories by each party and 10 depositions by each side.

The numerical limit on interrogatories applies to any discrete question, whether designated as a separate interrogatory or a subpart. The numerical limit on depositions applies to all plaintiffs as a group, all defendants as a group, and all third-party defendants as a group, unless otherwise provided in the scheduling order. The numerical limit on depositions in this Rule and in Rule 30(a)(2)(A), Federal Rules of Civil Procedure, shall not apply to depositions of experts designated pursuant to Rule 26(a)(2), Federal Rules of Civil Procedure.

(c) DURATION OF DEPOSITIONS.

No presumptive limits are established for the duration of a deposition, but the court in its scheduling order may provide that a deposition shall not exceed a set number of hours or days.

(d) FORM OF RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSIONS OR PRODUCTION OF DOCUMENTS

Answers, responses and objections to interrogatories and requests for admissions or for production of documents and motions to compel answers or responses, shall identify and quote each interrogatory or request in full immediately preceding the answer, response or objection thereto.

COMMENT TO LCvR 26.2: *Paragraphs (a), (b), and (c) are new, and are adopted to implement Section 7 of the Civil Justice Expense and Delay Reduction Plan and recent amendments to discovery provisions of the F.R.Civ.P.*

VARIATIONS FROM THE FEDERAL RULES OF CIVIL PROCEDURE:

1. Under this rule, initial disclosures are to be made within 10 days of the court's initial scheduling order, rather than within 10 days of the initial conference of the parties as provided in Rule 26(a)(1). This change is made to enable the court to determine, in its scheduling order, whether the Rule 26(a)(1) requirement should be eliminated or modified in a particular case.

2. Cases assigned to the Complex Track are exempted from the requirement of initial disclosures under Rule 26(a)(1), F.R.Civ.P., unless otherwise ordered by the court.

3. Rule 33(a), F.R.Civ.P., limits interrogatories to 25 per party in any case without leave of court. Rule 30(a)(2)(A), F.R.Civ.P., allows 10 depositions per side in any case without leave of court. This Rule contemplates that fewer interrogatories will ordinarily be permitted in Fast Track cases, and fewer depositions will be permitted in Fast Track or Standard Track cases, but the limit is always within the discretion of the judge.

4. This Rule, unlike the F.R.Civ.P., exempts depositions of experts from any limit imposed. Expert depositions may be taken whenever allowed by Rule 26(b)(4), F.R.Civ.P.

APPLICABILITY TO PENDING CASES:

The duty to make initial disclosures in accordance with Rule 26(a)(1), F.R.Civ.P., is applicable to all cases pending on March 1, 1994, as to which the time for the conference provided for by LCvR 26.2 has not been reached by that date.

LCvR 30.1

SERVICE OF NOTICE OF DEPOSITION

Service of a notice of deposition five days in advance of the date set for taking the deposition shall constitute "reasonable notice" to a party as required by Rule 30(b), Federal Rules of Civil Procedure, unless the deposition is to be taken at a place more than 50 miles from the District of Columbia, in which case 11 days shall constitute reasonable notice. The computation of time under this rule shall be governed by Rule 6, Federal Rules of Civil Procedure. The court may enlarge or shorten the time on application of a party for good cause shown. Nothing in this rule modifies the provision in Rule 32(a), Federal Rules of Civil Procedure, prohibiting the use of depositions against certain parties who with due diligence are unable to obtain counsel to represent them, or against parties with less than 11 days' notice who file a motion for protective order.

COMMENT TO LCvR 30.1: *The last sentence of the rule has been added for clarification in light of the recent amendment to Rule 32(a), F.R.Civ.P.*

LCvR 30.2

PRESUMPTIVE LIMITS ON INTERROGATORIES AND DEPOSITIONS

Whether and to what extent limitations shall be placed on the permitted number of interrogatories and depositions will be determined by the court in the scheduling order and may thereafter be changed on motion of the parties or the court's own motion. When the scheduling order sets limits different from those contained in Rules 30(a)(2)(A) and 33(a), Federal Rules of Civil Procedure, the scheduling order shall govern. The following presumptive limits will be applied by the court unless there appears good reason to depart from them:

Fast Track cases: 12 interrogatories by each party and 3 depositions by each side.

Standard Track cases: 25 interrogatories by each party and 5 depositions by each side.

Complex Track cases: 25 interrogatories by each party and 10 depositions by each side.

The numerical limit on interrogatories applies to any discrete question, whether designated as a separate interrogatory or a subpart. The numerical limit on depositions applies to all plaintiffs as a group, all defendants as a group, and all third-party defendants as a group, unless otherwise provided in the scheduling order. The numerical limit on depositions in this Rule and in Rule 30(a)(2)(A), Federal Rules of Civil Procedure, shall not apply to depositions of experts designated pursuant to Rule 26(a)(2), Federal Rules of Civil Procedure.

LCvR 30.3

DURATION OF DEPOSITIONS

No presumptive limits are established for the duration of a deposition, but the court in its scheduling order may provide that a deposition shall not exceed a set number of hours or days.

LCvR 30.4

FORM OF RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION OR PRODUCTION OF DOCUMENTS

Answers, responses and objections to interrogatories and requests for admissions or for production of documents and motions to compel answers or responses, shall identify and quote each interrogatory or request in full immediately preceding the answer, response or objection thereto.

LCvR 33.1

PRESUMPTIVE LIMITS ON INTERROGATORIES AND DEPOSITIONS

Whether and to what extent limitations shall be placed on the permitted number of interrogatories and depositions will be determined by the court in the scheduling order and may thereafter be changed on motion of the parties or the court's own motion. When the scheduling order sets limits different from those contained in Rules 30(a)(2)(A) and 33(a), Federal Rules of Civil Procedure, the scheduling order shall govern. The following presumptive limits will be applied by the court unless there appears good reason to depart from them:

Fast Track cases: 12 interrogatories by each party and 3 depositions by each side.

Standard Track cases: 25 interrogatories by each party and 5 depositions by each side.

Complex Track cases: 25 interrogatories by each party and 10 depositions by each side.

The numerical limit on interrogatories applies to any discrete question, whether designated as a separate interrogatory or a subpart. The numerical limit on depositions applies to all plaintiffs as a group, all defendants as a group, and all third-party defendants as a group, unless otherwise provided in the scheduling order. The numerical limit on depositions in this Rule and in Rule 30(a)(2)(A), Federal Rules of Civil Procedure, shall not apply to depositions of experts designated pursuant to Rule 26(a)(2), Federal Rules of Civil Procedure.

LCvR 34.1

FORM OF RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION OR PRODUCTION OF DOCUMENTS

Answers, responses and objections to interrogatories and requests for admissions or for production of documents and motions to compel answers or responses, shall identify and quote each interrogatory or request in full immediately preceding the answer, response or objection thereto.

LCvR 40.1

ASSIGNMENT SYSTEM

(a) CASES TO BE ASSIGNED TO A SINGLE JUDGE.

Unless otherwise provided in these Rules, each civil and criminal case shall be assigned to a single judge in the manner provided herein.

(b) CALENDAR COMMITTEE.

The assignment of cases to judges of this Court shall be performed by the Clerk under the direction of the Calendar Committee. The Calendar Committee shall be composed of three active judges appointed by the Chief Judge for one-year terms. No judge shall be required to serve more than two successive one-year terms. All matters dealing with the assignment of cases, including but not limited to any efforts to restrain or avoid the enforcement or application of rules under this Part shall be referred to the Chairman of the Calendar Committee for resolution by the Committee.

(c) EMERGENCY JUDGE.

A judge of this Court will be available, in accordance with a schedule of assignments announced from time to time by the Chief Judge, to hear emergency civil or criminal matters on all legal holidays and weekends. The emergency judge's assignment starts at 4:30 p.m. on the day preceding the weekend and ends at 9:00 a.m. the next business day. The judge designated for emergency assignments will not be present in the Courthouse but will be reasonably available, on call, in the area.

(d) NOTICE OF TRANSFERS AND REASSIGNMENTS.

All case transfers and reassignments shall be accompanied by formal notice to the Chairman of the Calendar Committee and to the Clerk's Office Liaison. The Clerk will notify each of the judges involved and all counsel in the case of the reassignment.

LCvR 40.2

CLASSES OF CASES

(a) CLASSIFICATION.

In order to assure a more even distribution of each type of case among the judges of this Court, each civil and criminal case will be classified for assignment purposes in accordance with a set of categories established by the court on the recommendation of the Calendar Committee.

(b) DESIGNATION AT TIME OF FILING.

Upon filing the complaint in a civil action, the attorney for the plaintiff shall note the proper classification of the case on a form provided by the Clerk. In criminal cases the United States Attorney shall, at the time of the return of an indictment, note the proper classification of the case on a form provided by the Clerk.

LCvR 40.3

MANNER OF ASSIGNMENT

(a) RANDOM ASSIGNMENT.

Except as otherwise provided by these Rules, civil, criminal and miscellaneous cases shall be assigned to Judges of this court selected at random in the following manner:

(1) The Clerk shall create a separate assignment deck in the automated system for each subclassification of civil and criminal cases established by the Court pursuant to LCvR 40.2 of these Rules and a separate deck for miscellaneous

cases[1]. The decks will be created by the Liaison to the Calendar Committee or the Liaison's backup and access to this function shall be restricted to these individuals to protect the integrity and confidentiality of the random assignment of cases. The Calendar Committee will, from time to time determine and indicate by order the frequency with which each judge's name shall appear in each designated deck, to effectuate an even distribution of cases among the active judges.

(2) At the time a civil complaint is filed or an indictment or information is returned in a criminal case, the case shall be assigned to the judge whose name appears on the screen when the appropriate deck is selected. The Clerk shall also stamp on the indictment, information, complaint or other initial pleading of each case, and on the file jacket, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is begun. Notwithstanding the foregoing, a civil case, requiring an emergency hearing, which is filed after normal business hours, shall not be assigned to a judge until the next business day.

(b) THREE-JUDGE COURT CASES.

Civil, including miscellaneous, cases requested or required to be heard by a Three-Judge Court shall be randomly assigned to a District Court judge, excluding the Chief Judge.

(c) WIRETAP ORDER APPLICATIONS.

Applications by the United States Attorney for orders authorizing interception of wire or oral communications shall be assigned in rotation by seniority among the active judges, excluding the Chief Judge.

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[1] For the purpose of this Rule, miscellaneous cases that will be randomly assigned will include, but not be limited to, these proceedings: (a) actions to perpetuate testimony as in Rule 27, Federal Rules of Civil Procedure; (b) actions to enforce administrative subpoenas and summonses; c proceedings ancillary to an action pending in another district; (d) supplementary proceedings brought in aid of execution; (e) motions for return of property in criminal proceedings; and (f) requests for judicial assistance. Grand Jury Miscellaneous cases will continue to be assigned to the Chief Judge and Pen Register Applications will continue to be assigned to magistrate judges.

(d) BANKRUPTCY MATTERS.

Bankruptcy matters requiring the attention of a District Judge shall be submitted to the Motions Judge, except as otherwise provided in D.C. LBR 5011-1(f)` and except that appeals from a Bankruptcy Judge's decisions and cases requiring a jury trial shall be randomly assigned.

(e) PRISONER PETITIONS.

Petitions for a *writ of habeas corpus* and complaints filed pursuant to 42 U.S.C. §1983 filed by a petitioner incarcerated in the District of Columbia or in Lorton Reformatory shall be randomly assigned, except that related petitions from the same petitioner may be assigned to the judge who received the initial petition after consultation with that judge. Motions filed under 28 U.S.C. §2255 shall, if possible, be assigned to the sentencing judge.

(f) ASSIGNMENT TO VISITING AND SENIOR JUDGES.

Cases may be assigned to visiting and senior judges in accordance with procedures adopted from time to time by the Calendar Committee.

(g) SPECIAL ASSIGNMENT BY THE CHIEF JUDGE.

If the Chief Judge determines at the time an indictment is returned that the case will be protracted and that the expeditious and efficient disposition of the court's business requires assignment of the case on a non-random basis, the Chief Judge may specially assign that case to any active judge or to any senior judge who consents. If the fact that a criminal case will be protracted is brought to the attention of the Chief Judge at any subsequent stage of the proceedings, the Chief Judge may determine whether the case shall remain with the judge to whom it is assigned or whether it shall be reassigned.

(h) PROCEEDINGS AFTER ASSIGNMENT.

All proceedings in a case after its assignment shall be conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules. A judge who declares a mistrial shall retain the case for subsequent proceedings including, where appropriate, retrial.

COMMENT TO LCvR 40.3: *To ensure an even distribution of cases filed on the miscellaneous docket these cases will now be randomly assigned to a Judge of this Court at the time of filing. The assigned Judge will maintain jurisdiction of the miscellaneous case for all purposes. The assignment of miscellaneous cases does not affect the duties of the Motions Judge as specified in LCvR 40.8*

LCvR 40.4

SUSPENSION OF NEW ASSIGNMENTS

A judge shall be relieved by the Calendar Committee from any new assignment of indictments and civil cases accompanied by motions for temporary restraining orders and preliminary injunctions or civil cases in which an intention to file a motion for a preliminary injunction is expressed, upon notification by the judge or the Chief Judge to the Committee that the judge: (1) has continued in a protracted trial or hearing for 10 consecutive trial days;[2] (2) is confined to a hospital; (3) is confined at home due to illness for seven days; (4) has had a death in the judge's immediate family; or (5) is performing judicial duties out of this jurisdiction pursuant to assignment. New cases shall be assigned to the judge in accordance with normal procedures upon the conclusion of any such condition.

Whenever a judge begins what is expected to be an unusually protracted criminal trial (one lasting four weeks or more) he or she may refer to the Calendar Committee for routine reassignment such other criminal cases assigned to such judge as the judge was unable to dispose of prior thereto and which are expected to require disposition pursuant to the Speedy Trial Act within the time period of the unusually protracted trial.

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[2] If a judge, after suspension based upon 10 consecutive days in a trial or hearing, thereafter devotes an occasional day to other court business, that judge shall not by virtue thereof be reinstated in the complete draw.

LCvR 40.5

RELATED CASES

(a) DEFINITION.

A related case for the purpose of this Rule means as follows:

(1) Criminal cases are deemed related when (i) a superseding indictment has been filed, or (ii) more than one indictment is filed or pending against the same defendant or defendants, or (iii) prosecution against different defendants arises from a common wiretap, search warrant, or activities which are a part of the same alleged criminal event or transaction. A case is considered pending until a defendant has been sentenced.

(2) If a civil forfeiture proceeding is filed concerning a criminal defendant, or a defendant is charged in a criminal case while a civil forfeiture proceeding is pending concerning that defendant, the civil and criminal cases are to be deemed related.

(3) Civil, including miscellaneous, cases are deemed related when the earliest is still pending on the merits in the District Court and they (i) relate to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent. Notwithstanding the foregoing, a case filed by a *pro se* litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case. However, if a judge in the interest of judicial economy, consolidates a significant number of similar *pro se* prisoner complaints, or has a single case with a significant number of *pro se* prisoner plaintiffs, and any of those prisoners later files a new complaint which is unrelated to the subject matter of the consolidated cases or the multiple plaintiffs' case, the judge who receives the new case as related may, if he or she chooses, refer the new case to the Calendar Committee for random assignment.

(4) Additionally, cases whether criminal or civil, including miscellaneous, shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter.

(b) NOTIFICATION OF RELATED CASES.

The parties shall notify the Clerk of the existence of related cases as follows:

(1) At the time of returning an indictment the United States Attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States District Court. The form shall be mailed to all defense counsel along with the notification of the arraignment. Any objection by the defendant to the related case designation shall be served on the U.S. Attorney and filed with the Clerk within 10 days after arraignment.

(2) At the time of filing any civil, including miscellaneous, action, the plaintiff or his attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States Court. The plaintiff shall serve this form on the defendant with the complaint. Any objection by the defendant to the related case designation shall be filed and served with the defendant's first responsive pleading or motion.

(3) Whenever an attorney for a party in a civil, including miscellaneous, or criminal action becomes aware of the existence of a related case or cases, the attorney shall immediately notify, in writing, the judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties. Upon receiving information from any source concerning a relationship between pending cases, the Clerk shall transmit that information in writing to the judges on whose calendars the cases appear and to all parties to the proceeding.

(c) ASSIGNMENT OF RELATED CASES.

Related cases noted at or after the time of filing shall be assigned in the following manner:

(1) Where the existence of a related case in this court is noted at the time the indictment is returned or the complaint is filed, the Clerk shall assign the new case to the judge to whom the oldest related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related, the judge may transfer the new case to the Calendar Committee. If the Calendar Committee finds that good cause exists for the transfer, it shall cause the case to be reassigned at random. If the Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(2) Where the existence of related cases in this court is revealed after the cases are assigned, the judge having the later-numbered case may transfer that case to the Calendar Committee for reassignment to the judge having the earlier case. If the Calendar Committee finds that good cause exists for the transfer, it shall assign the case to the judge having the earlier case. If the Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(3) Where a party objects to a designation that cases are related pursuant to subparagraphs (b)(1) or (b)(2) of this rule, the matter shall be determined by the judge to whom the case is assigned. Any party may appeal to the Calendar Committee from the trial judge's decision by filing an appropriate motion with the Clerk within three days after notification of the judge's decision. The Calendar Committee in its discretion may grant a hearing or decide the appeal on the papers. The decision of the Calendar Committee shall be final.

(d) MOTIONS TO CONSOLIDATE.

Motions to consolidate cases assigned to different judges of this court shall be heard and determined by the judge to whom the earlier-numbered case is assigned. If the motion is granted, the later-numbered case shall be reassigned in accordance with section c of this Rule.

(e) REFERRALS TO A SINGLE JUDGE BY THE CALENDAR COMMITTEE.

Upon a finding by the Calendar Committee that two or more cases assigned to different judges should be referred for a specific purpose to one judge in order to avoid a duplication of judicial effort, the Calendar Committee may enter such an order of referral. The order shall be with the consent of the judge to whom the cases will be referred and shall set forth the scope of authority of said judge. Unless otherwise provided, such an order shall not transfer any cases nor affect the assignment of future cases.

LCvR 40.6

OTHER TRANSFERS AND REASSIGNMENTS

(a) TRANSFERS BY CONSENT.

A judge, upon written advice to the Calendar Committee, may transfer directly all or part of any case on the judge's docket to any consenting judge.

(b) DEATH, RETIREMENT, APPOINTMENT OF NEW JUDGES, ETC.

When reassignments are necessitated by the death, retirement, resignation or incapacity of any judge or by the appointment of a new judge, or by any other circumstances, the Calendar Committee shall determine and indicate by order the method by which such reassignments shall be made.

(c) REASSIGNMENT OF CRIMINAL CASES.

If the Calendar Committee, giving due consideration to LCrR 45.1 of these Rules, determines in its discretion that the interests of justice require the transfer of any criminal case from one judge to another, it may reassign the case.

(d) CALENDAR COMMITTEE CALENDAR.

Any criminal case in which the only defendant is a fugitive or is mentally incompetent to stand trial shall be assigned to the Calendar Committee by the judge upon whose calendar it appears after the case has been pending for 90 days or more. In cases involving two or more defendants, in the event that one or more are fugitives or are mentally incompetent to stand trial, the case may go to trial as to those defendants who are not fugitives and are not mentally incompetent to stand trial. Upon the entry of a final judgment as to such defendants, the case shall be assigned to the Calendar Committee for further action as to those defendants who are fugitives or mentally incompetent to stand trial. Additionally, the case of any criminal defendant who becomes a fugitive subsequent to a guilty plea but prior to sentencing shall be assigned to the Calendar Committee by the judge upon whose calendar the case had appeared after such a fugitive has been an absconder for 90 days or more. The Calendar Committee may assign one or more judges for the purpose of making a periodic call of such cases. The judge or judges so assigned shall from time to time consult with the United States Attorney to ascertain whether dismissals of particular criminal actions or civil commitment of defendants incompetent to stand trial shall be deemed advisable. If the reasons which made a case untriable cease to exist, the case shall be reassigned for trial to the transferring judge.

(e) TRANSFERS NOT PROVIDED FOR BY OTHER RULES.

If a case is transferred to the Calendar Committee for any reason not otherwise provided for in this title, and the Calendar Committee approves the transfer, it shall cause the case to be reassigned by random lot or otherwise as these Rules provide.

LCvR 40.7

DUTIES OF THE CHIEF JUDGE

In addition to the trial of such cases as he/she may undertake and other duties provided by these Rules, the Chief Judge shall:

(l) preside at the assignment of criminal cases;

(2) hear and determine requests for excuse from service on grand and petit juries;

(3) empanel the grand jury and hear and determine all matters relating to proceedings before the grand jury;

(4) receive indictments from the grand jury;

(5) consider applications for allowance under the Criminal Justice Act in a case not already assigned;

(6) dispose of matters requiring immediate action in criminal cases already assigned to any judge of the Court if that judge is unavailable or otherwise unable to hear the matters;

(7) hear and determine requests for review of rulings by magistrate judges in criminal cases not already assigned to a judge of the Court; and

(8) take such other administrative actions, after consultation with appropriate committees of the Court, as in his/her judgment are necessary to assure the just, speedy and inexpensive determination of cases, and are not inconsistent with these Rules.

The Chief Judge may, from time to time, reassign any of the foregoing duties to an active judge for a reasonable period.

COMMENT TO LCvR 40.7: *Paragraph (8) has been added to affirm the power of the Chief Judge to take other appropriate administrative actions not inconsistent with the Rules.*

LCvR 40.8

MOTIONS JUDGE

(a) ASSIGNMENT BY ROTATION.

The active judges of this court except the Chief Judge shall be assigned in rotation according to seniority to serve one month as Motions Judge. Part or all of the Motions Judge assignment may be discharged by a volunteer senior judge designated by the Chief Judge.

(b) MATTERS HEARD BY MOTIONS JUDGE.

The Motions Judge shall hear and determine the following matters:

(l) Any petition, application or other proceeding of a civil nature which is not assigned to a judge of this court;

(2) Matters requiring action by a District Court Judge in bankruptcy cases, except that appeals from decisions of the Bankruptcy Judge shall be randomly assigned;

(3) Matters requiring immediate action in civil cases already assigned to a judge of the court, if that judge is absent or indicates that he or she is unavailable or otherwise unable to hear the matter;

(4) Naturalization proceedings; and

(5) Proceedings for admissions to the bar of this court.

(c) EXTENDED PROCEEDINGS IN MATTERS ASSIGNED TO THE MOTIONS JUDGE.

A judge who first takes a matter described in paragraph (b)(1) of this rule may decide to retain all further proceedings in the same matter, and in this event the judge shall promptly so advise the Calendar Committee. If the judge determines at the outset that the matter appears to require a substantial investment of judicial time and the judge decides not to retain it for all further proceedings, the judge shall promptly so advise the Calendar Committee for reassignment by lot.

LCvR 40.9

SANCTIONS IMPOSED

(a) COURT OFFICERS AND EMPLOYEES.

No officer or employee of the court may reveal to any other person, other than members of the Calendar Committee, the procedures for creating decks in the automated system or any list that may show the composition of any deck. No court officer or employee may number or assign any case other than in the manner provided in these rules or in the manner ordered by the Calendar Committee. An officer or employee who violates this provision shall be subject to discharge from service.

(b) THIRD PARTIES.

No person shall directly or indirectly cause, or procure, or attempt to cause or procure, a court officer or employee to reveal to any person, other than the members of the Calendar Committee, the sequence of the judges' names within each block of assignment cards, or to number or assign any case otherwise than herein provided or as ordered by the Calendar Committee. A violation of this rule may be punished as a contempt of court.

LCvR 40.10

COMPLAINTS AGAINST JUDGES

The Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), authorizes that complaints against United States circuit, district, bankruptcy, and magistrate judges who have "engaged in conduct prejudicial to the effective, and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability" may be submitted to a judicial committee for review.

Written complaints may be filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit, 333 Constitution Avenue, N.W., Room 5409, Washington D.C. 20001.

Comment to LCvR 40.10: *At its March 15, 1994 session, the Judicial Conference of the United States adopted resolutions regarding judicial misconduct and disability that call for certain actions by each United States District Court, as well as by the circuits and national courts covered by the Judicial Conduct and Disability Act of 1980, codified at 28 U.S.C. § 372(c). One of the Judicial Conference resolutions urged that a reference to the Act be included in the local rules of each district court. This new rule implements that suggestion.*

LCvR 47.1

JURY

(a) SELECTION AND ASSIGNMENT.

Grand and petit jurors shall be selected at random in accordance with a plan adopted by the court and available from the Jury Office. Petit jurors shall be assigned to a single jury pool and reassigned for service upon the requisition of each trial judge.

(b) NOTIFICATION OF SETTLEMENT IN CIVIL JURY CASES.

Whenever any civil action scheduled for jury trial is settled or otherwise resolved by the parties after the final pretrial conference, counsel shall notify the Clerk of the resolution of the action promptly and no later than one business day prior to the day on which the trial is scheduled to commence. In the event that the action is resolved by the parties less than one business day prior to the scheduled trial date, counsel shall notify the Clerk as soon as practicable after resolution of the action. The court may assess against the settling parties any juror costs incurred if the parties fail to provide notification as set forth in this rule, unless good cause for such failure is shown. Any such costs shall be assessed equally among the settling parties unless otherwise ordered by the court.

COMMENT TO LCvR 47.1: *This rule is intended to address situations where the parties resolve a civil action shortly before a scheduled jury trial. While the court continues to encourage the settlement of cases, budgetary constraints require that increased attention be paid to jury utilization practices. This rule requires the parties to notify the Clerk of any resolution as soon as possible in order to avoid the unnecessary cost to the court as well as the inconvenience to jurors that result when jurors are required to appear for a case that will not go forward as scheduled. To the extent available, the Clerk in this situation should be the Deputy Clerk assigned to the presiding judge. The rule authorizes the court to assess juror costs against the parties for a violation of the rule.*

LCvR 47.2

COMMUNICATION WITH A JUROR

(a) DURING TRIAL.

No party, attorney for a party, or person acting on behalf of a party or attorney, shall communicate directly or indirectly with a juror or an excused juror or a member of a juror's, or an excused juror's, family during the trial.

(b) AFTER TRIAL.

After a verdict is rendered or a mistrial is declared but before the jury is discharged, an attorney or party may request leave of court to speak with members of the jury after their discharge. Upon receiving such a request, the court shall inform the jury that no juror is required to speak to anyone but that a juror may do so if the juror wishes. If no request to speak with jurors is made before discharge of the jury, no party or attorney shall speak with a juror concerning the case except when permitted by the court for good cause shown in writing. The court may grant permission to speak with a juror upon such conditions as it deems appropriate, including but not limited to a requirement that the juror be examined only in the presence of the court.

COMMENT TO LCrR 24.2: *The new rule gives the court greater flexibility by stating that where the request to converse with jurors is made after their discharge, the court may impose such conditions as it deems appropriate.*

LCvR 53.1

EXPENSES OF A MASTER

In each order referring a matter to a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure, the court shall direct the allocation of costs among the parties.

LCvR 54.1

TAXATION OF COSTS

(a) BILL OF COSTS.

Costs shall be taxed as provided in Rule 54(d), Federal Rules of Civil Procedure. A prevailing party may serve and file a bill of costs which shall include all costs the party seeks to have taxed. This bill of costs shall specifically designate which costs fall within paragraph (d) of this rule. A bill of costs must be filed within 20 days after entry of judgment terminating the case as to the party seeking costs, unless the time is extended by the court. Any cost omitted from the bill of costs shall not be allowed, except for post-judgment costs.

(b) OPPOSITION TO THE BILL OF COSTS.

A party from whom costs are sought may file an opposition to the bill of costs within 11 days after service of the bill. The opposition shall identify each item objected to, and the grounds for the objection. If no objection is filed, the Clerk shall tax those costs specified in the bill which are permitted by paragraph (d) of this rule.

(c) TAXATION OF COSTS BY THE CLERK.

The Clerk shall tax costs after the judgment has become final or at such earlier time as the parties may agree or the court may order. A judgment is final when the time for appeal has expired and no appeal has been taken, or when the court of appeals issues its mandate.

(d) COSTS TAXABLE BY THE CLERK.

When requested to do so in the bill of costs, the Clerk shall tax the following costs:

(l) Clerk's fees;

(2) costs of service of summons and complaint;

(3) Marshal's fees and expenses specified in 28 U.S.C. §1921;

(4) docket fees and costs specified in 28 U.S.C. §1923;

(5) the cost of a bond or other security furnished by reason of a statute, court order or rule;

(6) the cost, at the reporter's standard rate, of the original and one copy of any deposition noticed by the prevailing party, and of one copy of any deposition noticed by any other party, if the deposition was used on the record, at a hearing or trial;

(7) the cost, at the reporter's standard rate, of the original and one copy of the reporter's transcript of a hearing or trial if the transcript: (i) is alleged by the prevailing party to have been necessary for the determination of an appeal within the meaning of Rule 39(e), Federal Rules of Appellate Procedure, or (ii) was required by the court to be transcribed;

(8) costs of copying those exhibits which are introduced into evidence, are used for impeachment, or are filed with the Clerk;

(9) other costs of copying up to $300.00;

(10) witness fees pursuant to 28 U.S.C. §1821(b), and travel and subsistence costs pursuant to 28 U.S.C. §1821(c), paid to each witness who testified at a hearing or trial;

(11) costs of service of a subpoena on a witness who testified at a deposition, hearing or trial;

(12) fees of court-appointed experts, fees of interpreters used at a trial or hearing, and fees and expenses of special interpretation services under 28 U.S.C. §1828; and

(13) any costs of the kind enumerated in this rule which were incurred in the District of Columbia courts prior to removal which are recoverable under the rules of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia;

(14) costs as shown on the mandate of the court of appeals.

(e) MOTION TO RETAX.

A review of the decision of the Clerk in the taxation of costs may be taken to the court on motion to retax by any party in accordance with Rule 54(d), Federal Rules of Civil Procedure. The court, on a motion to retax, for good cause shown may tax additional costs or may deny costs allowed by the Clerk pursuant to Section (d). A motion to retax shall specify the ruling of the Clerk excepted to and no other costs will be considered, except that the opposing party may, within 11 days of service of the motion to retax, file an opposition and/or a cross-motion to retax.

(f) COSTS AND ATTORNEYS FEES.

In a case in which the court has, at the time of the entry of final judgment, entered an order pursuant to LCvR 54.2(a), and in which a party wishes to present its claim for costs at the same time as its claim for attorneys' fees under LCvR 54.2, the requirements of this rule shall not apply.

***COMMENT TO LCvR 54.1:**. Insertion of the comma [LCvR 54.1(d)(6)] after the word "record" clarifies that the costs of depositions used in support of motions or pleadings may be taxed as well as depositions used at trials or hearings.*

LCvR 54.2

DETERMINATION OF ATTORNEYS FEES

(a) POST-JUDGMENT CONFERENCE.

In any case in which a party may be entitled to an attorneys fee from another party, the court may, at the time of entry of final judgment, enter an order directing the parties to confer and to attempt to reach agreement on fee issues. The order shall provide an extension of time for filing a motion under Rule 54(d)(2)(B). Such an order shall also set a status conference, ordinarily not more than 60 days thereafter, at which the court will (l) determine whether settlement of any or all aspects of the fee matter has been reached, (2) enter judgment for any fee on which agreement has been reached, (3) make the determination required by paragraph (b) of this rule, and (4) set an appropriate schedule for completion of the fee litigation. If the court does not enter an order and schedule a status conference pursuant to this Rule, the parties are to proceed with motions for attorneys fees pursuant to Rule 54(d)(2), Federal Rules of Civil Procedure.

(b) DETERMINATION OF ATTORNEYS FEES PENDING APPEAL.

If a status conference described in paragraph (a) is held, the court shall ascertain whether an appeal is being taken by either party, and if so, whether the appeal is on all or fewer than all issues. If a party has not finally decided whether to appeal, the court may allow the party reasonable additional time to reach such a decision. After a decision has been made that there will be an appeal, the court shall make a specific determination as to whether, in the interest of justice, the fee issues, in whole or in part, should be considered or be held in abeyance pending the outcome of the appeal.

(c) INTERIM AWARDS.

Nothing in this rule precludes interim applications for attorneys fees prior to final judgment, nor does this rule apply to attorneys fees sought as sanctions under Rules 11, 16, 26 or 37, Federal Rules of Civil Procedure.

COMMENT TO LCvR 54.2: *Changes have been made in this Rule to take account of the recent adoption of Rule 54(d)(2), F.R.Civ.P., which provides a procedure for determination of fee awards. The procedure previously set forth in LCvR 54.2 has been retained, but is no longer mandatory. Under Rule 58, F.R.Civ.P., the court may order that the filing of a motion for attorneys fees pursuant to Rule 54(d)(2) prior to the filing of a notice of appeal extends the time within which an appeal may be taken from the underlying judgment until after the court rules on the motion for attorneys fees.*

LCvR 56.1

MOTIONS FOR SUMMARY JUDGMENT

Each motion for summary judgment shall be accompanied by a statement of material facts as to which the moving party contends there is no genuine issue, which shall include references to the parts of the record relied on to support the statement. An opposition to such a motion shall be accompanied by a separate concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, which shall include references to the parts of the record relied on to support the statement. Each such motion and opposition must also contain or be accompanied by a memorandum of points and authorities required by sections (a) and c of this rule. In determining a motion for summary judgment, the court may assume that facts identified by the moving party in its statement of material facts are admitted, unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion.

LCvR 65.1

TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

(a) APPLICATIONS FOR TEMPORARY RESTRAINING ORDERS.

An application for a temporary restraining order shall be made in a motion separate from the complaint. The application shall be accompanied by a certificate of counsel, or other proof satisfactory to the court, stating (l) that actual notice of the time of making the application, and copies of all pleadings and papers filed in the action to date or to be presented to the court at the hearing, have been furnished to the adverse party; or (2) the efforts made by the applicant to give such notice and furnish such copies. Except in an emergency, the court will not consider an *ex parte* application for a temporary restraining order.

(b) EMERGENCY APPLICATIONS OUTSIDE BUSINESS HOURS.

If an application for a temporary restraining order is to be made to a judge outside regular business hours, the party seeking relief shall, if possible, notify the Clerk of such a forthcoming application during business hours so that proper arrangements can be made to handle the matter. If notice is not given to the Clerk as provided herein, the party shall file with its application an affidavit stating why such notice was not given. The court may decline to hear an application on an emergency basis if the affidavit fails to state sufficient reason for failure to give notice as provided herein.

(c) APPLICATIONS FOR PRELIMINARY INJUNCTIONS.

An application for a preliminary injunction shall be made in a document separate from the complaint. The application shall be supported by all affidavits on which the plaintiff intends to rely. The opposition shall be served and filed within five days after service of the application for preliminary injunction, and shall be accompanied by all affidavits on which the defendant intends to rely. Supplemental affidavits either to the application or the opposition may be filed only with permission of the court.

(d) HEARINGS ON APPLICATIONS FOR PRELIMINARY INJUNCTIONS.

On request of the moving party together with a statement of the facts which make expedition essential, a hearing on an application for preliminary injunction shall be set by the court no later than 20 days after its filing, unless the court earlier decides the motion on the papers or makes a finding that a later hearing date will not prejudice the parties. The practice in this jurisdiction is to decide preliminary injunction motions without live testimony where possible. Accordingly, any party who wishes to offer live testimony or cross-examine an affiant at the hearing shall so request in writing 72 hours before the hearing and shall provide the court and all other parties a list of the witnesses to be examined and an estimate of the time required. The court may decline to hear witnesses at the hearing where the need for live testimony is outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. If practicable, the court shall notify all parties of its ruling on the request to adduce live testimony one business day before the hearing.

COMMENT TO LCvR 65.1: *Paragraph (a), is applicable to temporary restraining orders. Paragraph (b) is new, and is designed to prevent "judge-shopping" by making application to the Emergency Judge rather than to a judge chosen at random through the Clerk's normal procedures. Paragraphs (c) and (d), applicable to applications for preliminary injunctions, are new. The Committee believes that a rule is needed to regulate the use of affidavits and live testimony on such applications and to entitle the applicant to a prompt hearing where necessary. The grounds for exclusion of live testimony are taken from Rule 403, Federal Rules of Evidence.*

LCvR 65.1.1

BONDS AND SURETIES

Any bond or undertaking required in a proceeding must be set by an order or by consent. The bond or undertaking may be in the form of a surety, cash or check. A surety holding authority from the Secretary of the Treasury to do business in the District of Columbia and having an agent for service of process therein may be approved by the Clerk and filed. In all other cases, the person seeking approval of the bond shall serve on all parties to be secured two days written notice of the application, stating the name and address of the surety. Court approval is required. No officer of the court or member of the bar in active practice will be accepted as a surety.

LCvR 67.1

COURT REGISTRY INVESTMENT SYSTEM

The following procedures shall govern deposits into the registry of the Court in all civil actions.

(a) RECEIPT OF FUNDS.

(1) Unless the statute requires the deposit of funds without leave of Court, no money shall be sent to the Court or its officers for deposit into the Court's registry without a court order signed by the presiding Judge in the case or proceeding.

(2) Unless provided for elsewhere in this rule, all money ordered to be paid into the court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this court pursuant to 28 U.S.C. 2041 through depositaries designated by the Treasury to accept such deposit on its behalf.

(3) The party making the deposit or transferring funds to the court's registry shall serve the order permitting the deposit or transfer on the Clerk.

(b) INVESTMENT OF REGISTRY FUNDS.

(1) All funds deposited into the registry of the Court will be placed in some form of interest bearing account. Unless otherwise ordered, the Court Registry Investment System (CRIS), administered through the United States District Court for the Southern District of Texas, shall be the investment mechanism authorized.

(2) Under CRIS, monies deposited in each case under (a)(1) will be "pooled" together with those on deposit with the Treasury to the credit of other courts in the Court Registry Investment System and used to purchase Treasury Securities which will be held at the Federal Reserve Bank of the Dallas/Houston Branch, in a Safekeeping account in the name and to the credit of the Clerk, United States Court for the Southern District of Texas, hereby designated custodian for the Court Registry Investment System.

(3) An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment in the system. Income received from fund investments will be distributed to each case based on the ratio each account's principal and income has to the aggregate principal and income total in the fund each week. Weekly reports showing the income earned and the

principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to litigants and/or their counsel.

(c) REGISTRY INVESTMENT FEE.

(1) The custodian is authorized and directed by this Rule to deduct, for maintaining accounts in the Fund, a fee equal to 10% of the income earned.

(2) No additional fee shall be assessed with respect to investments for which a fee has already been deducted prior to the establishment of CRIS in this district.

COMMENT TO LCvR 67.1: *This new rule incorporates the substance of the September 30, 1993, Order of Chief Judge Penn adopting the Court Registry Investment System. In section (a)(1) it is understood that, as with other rules, in the absence of the "presiding judge" the order could be entered by the motions judge. The transition section of the Order was not included in the rule.*

LCvR 72.1

DUTIES AND POWERS OF MAGISTRATE JUDGES

(a) GENERAL DUTIES.

The United States Magistrate Judges appointed by this Court pursuant to 28 U.S.C. §631 shall have the duty and the power to:

(l) Act as committing magistrate judge in holding preliminary hearings for violations of the United States Code.

(2) Issue arrest warrants or summonses for violations of the United States Code.

(3) Issue search warrants.

(4) Conduct federal removal proceedings and issue warrants of removal as provided in Rule 40, Federal Rules of Criminal Procedure.

(5) Conduct international extradition proceedings.

(6) Administer oaths and affirmations and take acknowledgments, affidavits and depositions.

(7) Impose or review conditions of release under applicable federal law.

(8) Order the return or the forfeiture of collateral or surety bonds.

(9) Issue subpoenas, *writs of habeas corpus ad testificandum,* or *habeas corpus ad proseduendum,* or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(10) Order lineups, photographs, fingerprinting, palm-printing, voice identification, medical or physical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion sampling (with any appropriate medical safeguards required by due process considerations) and handwriting exemplars.

(11) Ascertain whether defendants in criminal cases docketed in this Court are represented by counsel and, in instances where any defendant is financially unable to obtain counsel, appoint counsel to represent the defendant throughout all proceedings in this Court.

(12) Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. §1782.

(13) Conduct proceedings and enter orders as described in LCvR 73.1 and LCvR 73.2 of these Rules.

(14) Refer a defendant to an available facility for a preliminary opinion; hear motions, and enter orders for examinations to determine mental competency; and conduct competency hearings to determine a defendant's ability to understand and to participate in any proceeding which a magistrate judge is authorized to conduct.

(15) Conduct hearings and enter orders regarding persons believed to be mentally ill found in certain federal reservations, in accordance with 21 D.C. Code §§ 901-909.

(16) Perform any additional duty not inconsistent with the Constitution and laws of the United States.

(b) POWERS EXERCISED AT THE REQUEST OF A JUDGE.

At the request of the judge to whom the case is assigned, a magistrate judge shall have the duty and power to:

(1) Conduct proceedings and enter orders or recommendations as described in LCvR 72.2 and LCvR 72.3 of these Rules.

(2) Dismiss indictments on motion of the United States Attorney and with the consent of the defendants.

(3) Conduct arraignments to the extent of taking and entering pleas of not guilty.

(4) Enter scheduling orders and exercise other powers provided in Rules 16 and 26(f), Federal Rules of Civil Procedure, and LCvR 16.3 and LCvR 76.3 of these Rules.

(5) Serve as a special master in civil actions pursuant to Rule 53, Federal Rules of Civil Procedure.

(6) Conduct *voir dire* and select petit juries.

(7) Accept petit jury verdicts in civil cases in the absence of a judge.

(8) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure.

(c) POWERS EXERCISED AT THE REQUEST OF THE CHIEF JUDGE.

At the request of the Chief Judge, the magistrate judge shall have the duty and power to:

(1) Receive indictments returned by the grand jury and issue bench warrants, when necessary, for defendants named in the indictments.

(2) Conduct proceedings incident to the transfer of cases pursuant to Rule 20, Federal Rules of Criminal Procedure.

COMMENT TO LCvR 72.1: *The rule has been revised to make it clear that a magistrate judge's authority to make competency determinations is limited to proceedings which a magistrate judge is authorized to conduct and is not a final dispositive order on the question of a defendant's competency to stand trial. Determinations as to competency of a defendant to stand trial will continue to be made by the trial judge.*

LCvR 72.2

REFERRAL OF MOTIONS AND PRETRIAL MATTERS TO MAGISTRATE JUDGES

(a) MATTERS DETERMINABLE BY A MAGISTRATE JUDGE.

At the request of the judge to whom the case is assigned, a magistrate judge may hear and determine any pretrial motion or matter other than those motions specified in LCvR 72.3 of these Rules, and may conduct pretrial proceedings and enter orders pursuant to LCvR 16.4 of these Rules.

(b) MOTION FOR RECONSIDERATION OF THE MAGISTRATE JUDGE'S RULING.

Any party may request the judge to reconsider a magistrate judge's ruling under paragraph (a) by filing a motion to reconsider within 10 days after being served with the order of the magistrate judge, unless a different time is prescribed by the magistrate judge or the judge. The motion shall specifically designate the order or part thereof to which objection is made, and the basis for the objection.

(c) BASIS FOR RECONSIDERATION.

Upon a motion for reconsideration or *sua sponte,* a judge may modify or set aside any portion of a magistrate judge's order under this rule found to be clearly erroneous or contrary to law. A judge may modify or set aside any portion of a magistrate judge's order pursuant to Rule 209 of these Rules whenever the judge deems such a modification necessary or appropriate.

LCvR 72.3

REFERRAL OF MATTERS FOR HEARING AND RECOMMENDATION BY MAGISTRATE JUDGES

(a) MATTERS REFERABLE TO A MAGISTRATE JUDGE FOR HEARING AND RECOMMENDATION.

At the request of the judge to whom the case is assigned, a magistrate judge may conduct hearings, including evidentiary hearings, and submit to the judge proposed findings of fact and recommendations for the disposition of:

(l) applications for posttrial relief made by individuals convicted of criminal offenses;

(2) prisoner petitions challenging conditions of confinement;

(3) applications for revocation of probation, in accordance with LCrR 57.7c of these Rules;

(4) motions for injunctive relief (including temporary restraining orders and preliminary injunctions);

(5) motions for judgment on the pleadings, for summary judgment, to dismiss an indictment or information made by the defendant, or otherwise to dismiss an action involuntarily;

(6) motions to set aside default judgments;

(7) petitions for judicial review of administrative determinations; and

(8) petitions for civil commitment arising under Title III of the Narcotic Addict Rehabilitation Act of 1966, 18 U.S.C. §4251, *et seq.*

(b) OBJECTION TO RECOMMENDATIONS OF THE MAGISTRATE JUDGE.

Any party may file written objections to the magistrate judge's proposed findings and recommendations issued under paragraph (a) within ten days after being served with a copy thereof. The objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection.

Failure to file timely objections may waive appellate review of a District Court order adopting the magistrate judge's report. All magistrate judge's reports shall contain a notice substantially as follows:

Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of appeal from an order of the District Court adopting such findings and recommendations. See *Thomas v. Arn,* 474 U.S. 140 (1985).

(c) DETERMINATION BY THE COURT.

A judge shall make a *de novo* determination of those portions of a magistrate judge's findings and recommendations to which objection is made as provided in paragraph (b). A judge may make a determination based solely on the record developed before the magistrate judge, or may conduct a new hearing and receive further evidence.

The judge may also receive further evidence and recall witnesses. A judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge, or may recommit the matter to the magistrate judge with instructions.

COMMENT TO LCvR 72.3(b) AS AMENDED 10/10/90: *This amendment is designed to provide litigants with the notice required by the Supreme Court in* Thomas v. Arn. *In that case, the Supreme Court held that the Courts of Appeals may find a waiver of the right to appeal a District Court order adopting a magistrate judge's report and order unless timely objections are filed with the District Court. As LCvR 72.3 currently reads, litigants would reasonably conclude that failure to file objections within ten days waives the right to District Court review of the magistrate judge's report. However, without notice, it does not logically follow that failure to timely object would also waive the right to appellate review of the magistrate judge's recommendations and orders. Every Circuit, except the District of Columbia, has adopted some type of waiver rule. The D.C. Circuit has not yet addressed the issue.*

LCvR 73.1

REFERRAL OF CIVIL CASES TO MAGISTRATE JUDGES FOR ALL PURPOSES

(a) CONSENT TO ASSIGNMENT.

By consent of all parties and with the approval of the judge to whom the case is assigned, a magistrate judge may conduct any and all proceedings in a civil case, including trials (with or without a jury), and may thereafter order entry of judgment, in accordance with 28 U.S.C. §636(c).

(b) PROCEDURE FOR CONSENT.

The Clerk shall notify the parties of their voluntary right to consent to assignment of a civil case to a magistrate judge as soon as practicable after the action is filed. If the parties consent to such an assignment, a notice of consent signed by the parties or their attorneys shall be filed with the Clerk. The notice of consent should be filed prior to entry of a pretrial order under Rule 209 of these Rules. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.

(c) APPEAL TO THE UNITED STATES COURT OF APPEALS.

An appeal from a judgment of a magistrate judge shall be taken to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from ~~a~~ any other judgment of the district court in a civil case.

COMMENT TO LCvR 73.1: *LCvR 73.1(b) has been changed to conform to 28 U.S.C. § 636(C)(2) (1991). That section was recently amended to provide the district or magistrate judge an opportunity, at any time after the initiation of the lawsuit, to inform the parties of the availability of the magistrate judge. The word "voluntary" and the last sentence of paragraph (b) are added because 28 U.S.C. § 636(c)(2) requires the court in its local rules to "include procedures to protect the voluntariness of the parties' consent." LCvR 73.1(d) has been eliminated to comply with the changes to 28 U.S.C. §636(C(3) made by Section 207 of the Federal Courts Improvement Act of 1996.*

LCvR 77.1

CLERK'S OFFICE

The office of the Clerk shall remain open for the transaction of business from 9:00 A.M. until 4:30 P.M. daily except Saturdays, Sundays and legal holidays. Papers, except for sealed material, that must be filed on a given date may be delivered after 4:30 P.M. to the security desk at the John Marshall Park entrance to the courthouse. Papers found to be in compliance with these rules will be filed as of the date they were delivered to the security desk. Documents that are being filed under seal pursuant to a protective order must be filed in the Clerk's Office during business hours because the Security Officers are not authorized to accept this material.

LCvR 78.1

ORAL HEARINGS

A party may in a motion or opposition request an oral hearing, but its allowance shall be within the discretion of the court. If at the time of the hearing the moving party fails to appear, the court may treat the motion as withdrawn; if the opposing party fails to appear, the court may treat the motion as conceded.

LCvR 79.1

CUSTODY AND REMOVAL OF RECORDS

REMOVAL OF RECORDS.

No original paper, document or record in any case shall be removed from its place of filing or custody, except under the following conditions:

(l) The Clerk or one of the Clerk's deputies, any attorney or party to the case, or any person designated by a judge, may remove any paper, document or record, when required or ordered for use before a judge or a person to whom the case has been referred for consideration, for the use required or ordered

(2) No paper, document, or record shall be taken from the courthouse by any person other than the Clerk or one of the Clerk's deputies except by permission of the court.

(3) Where a paper, document or record is removed by a person other than the Clerk or one of the Clerk's deputies, a receipt shall be given to the Clerk.

(4) Any person removing a record shall return it immediately upon completion of the purpose for which it was removed.

LCvR 79.2

CUSTODY OF EXHIBITS IN CIVIL CASES

All exhibits offered by a party in a civil proceeding whether or not received as evidence, shall be retained after trial by the party or the attorney offering the exhibit, unless otherwise ordered by the court. In the event an appeal is prosecuted, each party to the action in this court, upon notification from the Clerk that the record is to be transmitted and upon request

of a party to the appeal, shall file with the Clerk any exhibits to be transmitted as part of the record on appeal. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties, who shall make them available for use by the appellate court upon request. Within thirty days after final disposition of the case by the appellate court, the exhibits shall be removed by the parties who offered them. If any party, having received notice from the Clerk to remove exhibit as provided herein, fails to do so within thirty days of the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

LCvR 83.1

PHOTOGRAPH, TAPE RECORDING, BROADCASTING IN THE COURTHOUSE

The taking of photographs and operation of tape recorders inside the United States Courthouse and radio or television broadcasting from inside the courthouse during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate Judge, whether or not court is actually in session, are prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings, and (3) the videotaping or audio taping of educational programs with prior approval of the Chief Judge and under such conditions as he or she may prescribe. The use of the above equipment is permissible within a judge's chambers at the discretion of the judge. Contents of official tapes that are made as part of the record in a case will be treated in the same manner as official stenographic notes.

LCvR 83.2

PRACTICE BY ATTORNEYS

(a) PRACTICE BY MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the bar of this Court may appear, file papers and practice in this Court, provided that the attorney complies with section (b) of this rule.

(b) APPEARANCE AS SOLE OR LEAD COUNSEL IN A CONTESTED EVIDENTIARY HEARING OR TRIAL ON THE MERITS.

Each attorney who acts as sole or lead counsel in any contested evidentiary hearing or trial on the merits, civil or criminal, must have on file with the Clerk's office a certificate, in a form prescribed by the Clerk, that the attorney

(l) has previously acted as sole or lead counsel in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction in a contested jury or bench trial or other contested evidentiary hearing in which testimony was taken in open court and an order or other appealable judgment was entered; or

(2) has participated in a junior capacity in an entire contested jury or bench trial in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction; or

(3) has satisfactorily completed a continuing legal education trial advocacy course of at least 30 hours sponsored by the District of Columbia Bar or accredited by a State Bar.

(c) PRACTICE BY NON-MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any State, but who is not a member of the bar of this Court, may file papers in this Court only if such attorney joins of record a member in good standing of the bar of this Court. All papers submitted by non-members of the bar of this Court must be signed by such counsel and by a member of the bar of this Court joined in compliance with this rule.

(d) PARTICIPATION BY NON-MEMBERS OF THIS COURT'S BAR IN COURT PROCEEDINGS.

An attorney who is not a member of the bar of this court may be heard in open court only by permission of the judge to whom the case is assigned.

(e) ATTORNEYS EMPLOYED BY THE UNITED STATES.

An attorney who is employed or retained by the United States or one of its agencies may appear, file papers and practice in this court in cases in which the United States or the agency is a party, irrespective of (c) and (d) above.

(f) ATTORNEYS EMPLOYED BY A STATE.

A State Attorney General or that official's designee, who is a member in good standing of the bar of the highest court in any State or of any United States Court, may appear and represent the State or any agency thereof, irrespective of (c) and (d) above.

(g) ATTORNEYS REPRESENTING INDIGENTS.

Notwithstanding (c) and (d) above, an attorney who is a member in good standing of the District of Columbia Bar or who is a member in good standing of the bar of any United States Court or of the highest court of any State may appear, file papers and practice in any case handled without a fee on behalf of indigents under LCvR 83.10 upon filing a certificate that the attorney is providing representation without compensation.

(h) ENTRY AND WITHDRAWAL OF APPEARANCE.

Attorneys may enter and withdraw appearances in civil actions as provided in LCvR 83.6 of these rules, and in criminal actions as provided in LCrR 44.5 of these rules.

(i) STRIKING APPEARANCE FOR NONATTENDANCE AT COURT PROCEEDINGS.

The court may, upon notice and after affording an opportunity to be heard, strike the appearance of any attorney in a particular case for failure, without adequate cause, to attend any hearing, conference or other proceeding. The fact that an attorney's residence or office is located at a place distant from the District of Columbia does not constitute grounds for rescheduling or failing to attend court proceedings.

(j) CERTIFICATION BY NON-MEMBERS OF THE BAR OF THIS COURT

An attorney who appears, files papers and practices in this Court pursuant to (e), (f) or (g) above, shall file certification of personal familiarity with the Local Rules of this Court and, as appropriate, the other materials set forth in Rules 701(b)(6) and 701.1(a) simultaneously with each initial appearance by the attorney before a judge of this Court.

LCvR 83.3

NUMBER OF COUNSEL

Except by permission of the court only one attorney on each side shall examine a witness, address the court on a question arising in a trial, or address the court or jury in final argument.

LCvR 83.4

PRACTICE BY LAW STUDENTS

(a) ACTIVITIES.

A law student certified pursuant to this rule may:

(l) Enter an appearance in this court in any criminal or civil case if the client on whose behalf the law student is appearing has consented in writing to that appearance, and a "supervising lawyer", as hereinafter defined, has also indicated written approval of that appearance.

(2) Engage in activities on behalf of the client in all ways that a licensed attorney may, under the general supervision of the supervising lawyer; however, a student may make no binding commitments on behalf of a client absent prior client and supervisory approval; and in any matters, including depositions, in which testimony is taken the student must be accompanied by the supervising lawyer. Documents or papers filed with the court must be read, approved, and co-signed by the supervising lawyer.

(3) The court retains the authority to establish exceptions to such activities, and also to limit a student's participation in any individual case.

(b) STUDENT, PROGRAM AND SUPERVISOR REQUIREMENTS.

(l) **STUDENT REQUIREMENTS.**

In order to be certified pursuant to this Rule a law student shall:

(i) Be a law student in good standing, enrolled in and attending a law school approved by the American Bar Association;

(ii) Have completed at least four semesters of legal studies, or the equivalent;

(iii) Have knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, and the Code of Professional Responsibility;

(iv) Be enrolled for credit in a law school clinical program which has been certified by this court;

(v) Be certified by the dean of the law school, or the dean's designee, as being of good character and sufficient legal ability, and as being adequately trained, in accordance with paragraphs I-iv above, to fulfill the responsibilities as a legal intern to both the client and the court;

(vi) Be certified by this court to practice pursuant to this Rule;

(vii) Neither ask for nor receive any fee or compensation of any kind from the client on whose behalf service is rendered, nor under the Criminal Justice Act, under this Rule; but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency or the government from paying compensation to the eligible law student nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(2) **PROGRAM REQUIREMENTS.**

The program:

(i) Must be a law school clinical practice program for credit, in which a law student obtains academic and practice advocacy training, utilizing attorneys certified by the dean of the law school for practice supervision;

(ii) Must be certified by this court;

(iii) Must be conducted in such a manner as not to conflict with normal court schedules;

(iv) May accept compensation other than from a client such as Criminal Justice Act (CJA) payments;

(v) Must maintain malpractice insurance for its activities.

(3) **SUPERVISOR REQUIREMENTS.**

The person under whose supervision an eligible law student does any of the things permitted by this rule shall:

(i) Be a member in good standing of the bar of this court;

(ii) (a) Have faculty or adjunct faculty status at the responsible law school and be certified by the dean of the law school as being of good character and sufficient legal ability and as being adequately trained to fulfill the responsibilities of a supervisor; or

(b) Be a member of the bar of this court for at least two years, who after the certification by the dean of the law school as being of good character and adequately trained to fulfill the responsibilities of a supervisor, is determined by the court to be competent to carry out the role of supervising attorney;

(iii) Be certified by this court as a student supervisor;

(iv) Be present with the student at all times in court, and at other proceedings in which testimony is taken;

(v) Co-sign all pleadings or other documents filed with the court;

(vi) Supervise concurrently no more than 10 students carrying clinical practice as their entire academic program, with a proportionate increase in the number of students as their percentage of time devoted to clinical practice may be less;

(vii) Assume full personal professional responsibility for student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;

(viii) Assist and counsel the student in activities mentioned in this Rule, and review such activities with the student, all to the extent required for the proper practical training of the student and the protection of the client;

(ix) Be responsible to supplement oral or written work of the student as necessary to ensure proper representation of the client

(c) CERTIFICATION OF STUDENT, PROGRAM AND SUPERVISOR.

(l) **STUDENT:**

(i) Certification by the law school dean and approval by the court shall be filed with the Clerk, and unless it is sooner withdrawn, shall remain in effect until expiration of 18 months;

(ii) Certification to appear in a particular case may be withdrawn by the court at any time, in the discretion of the court, and without any showing of cause.

(2) **PROGRAM:**

(i) Certification of a program by the court shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the court;

(ii) Certification of a program may be withdrawn by the court at the end of any academic year without cause, or at any time, provided notice stating the cause for such withdrawal is furnished to the law school dean and supervisor.

(3) **SUPERVISOR:**

(i) Certification of a supervisor must be filed with the Clerk, and shall remain in effect indefinitely unless withdrawn by the court;

(ii) Certification of a supervisor may be withdrawn by the court at the end of any academic year without cause, or at any time upon notice and a showing of cause;

(iii) Certification of a supervisor may be withdrawn by the dean by mailing a notice to that effect to the Clerk.

LCvR 83.5

PRACTICE BY LAW CLERKS AND COURT EMPLOYEES

Law clerks and secretaries to judges of this court, and all other persons employed in any capacity by this court, shall not engage in the practice of law while so employed. A law clerk or secretary to a particular judge of this court shall not, at any time after separating from that position, engage in any activity as an attorney or advisor, nor permit his or her name to appear as an attorney on any paper filed in this court, in connection with any case that was pending on that judge's docket during his or her term of service. Any other person employed in any capacity by this court shall not, for a period of two years after separating from that position, engage in any activity as an attorney or advisor in connection with any case that was pending in this court during his or her term of service. Each former law clerk, secretary or other employee of this court, as well as persons employing or associating with them in the practice of law before this court, shall have the responsibility of enforcing the provisions of this rule. Evidence of a failure to comply with this rule shall be referred to this court's Committee on Grievances.

LCvR 83.6

ENTRY AND WITHDRAWAL OF APPEARANCES BY ATTORNEYS IN CIVIL ACTIONS

(a) ENTRY OF APPEARANCE.

An attorney eligible to appear may enter an appearance in a civil action by signing any pleading described in Rule 7(a), Federal Rules of Civil Procedure, or by filing a written notice of the entry of an appearance listing the attorney's correct address, telephone number and bar identification number.

(b) WITHDRAWAL OF APPEARANCE BY NOTICE.

If no trial date has been set, an attorney may withdraw an appearance in a civil action by filing a notice of withdrawal signed by the attorney and the party represented, if another attorney has previously entered an appearance on behalf of the party.

(c) WITHDRAWAL OF APPEARANCE BY MOTION.

If a trial date has been set, or if the party's written consent is not obtained, or if the party is not represented by another attorney, an attorney may withdraw an appearance for a party only by order of the court upon motion by the attorney served upon all parties to the case. Unless the party is represented by another attorney or the motion

is made in open court in the party's presence, a motion to withdraw an appearance shall be accompanied by a certificate of service listing the party's last known address and stating that the attorney has served upon the party a copy of the motion and a notice advising the party to obtain other counsel, or, if the party intends to conduct the case *pro se* or to object to the withdrawal, to so notify the Clerk in writing within five days of service of the motion.

(d) RULING ON MOTION TO WITHDRAW APPEARANCE.

The court may deny an attorney's motion for leave to withdraw if the withdrawal would unduly delay trial of the case, or be unfairly prejudicial to any party, or otherwise not be in the interests of justice. The Clerk shall mail to the affected party a copy of the order granting or denying the motion for leave to withdraw.

COMMENT TO LCvR 83.6: *This rule adds the requirement as in LCvR 5.1, that an attorney's appearance notice contain the attorney's Bar identification number.*

LCvR 83.7

REVIEW OF ORDERS AS TO ADMISSION OR EXCLUSION OF PRACTITIONERS BEFORE THE PATENT OFFICE

A person refused recognition to practice or suspended or excluded from practice before the Patent Office may file a petition in this court against the Commissioner of Patents for review of such action within 30 days after the date of the order recording the Commissioner's action. The Commissioner shall answer the petition within 20 days after receiving service of the summons. Within 11 days after filing of the answer, the petitioner shall file a certified copy of the record and proceedings before the Patent Office, which shall constitute the sole basis for the court's review.

LCvR 83.8

ADMISSION TO THE BAR

(a) WHO MAY BE ADMITTED.

Admission to and continuing membership in the bar of this Court are limited to attorneys who are (1) active members in good standing in the District of Columbia Bar; or (2) active members in good standing of the highest court of any state in which the attorney maintains his/her principal law office and is a member in good standing of a United States District Court that provides for reciprocal admission to members of the bar of this Court.

(b) PETITION FOR ADMISSION.

Each applicant for admission shall file with the Clerk at least ten days prior to hearing thereon (unless for good cause shown the judge shall shorten the time) a written petition for admission on a form supplied by the Clerk stating:

(l) applicant's residence and office addresses and office telephone number;

(2) the court where and date when admitted;

(3) applicant's legal training and experience;

(4) whether the applicant has ever been held in contempt of court and, if so, the nature of the contempt and the final disposition thereof;

(5) whether the applicant has ever been convicted of any crime (other than minor traffic offenses) or publicly reprimanded, publicly censured, suspended, disciplined or disbarred by any court, and, if so, the facts and circumstances connected therewith; and

(6) that the applicant is familiar with:

(i) the provisions of the Judicial Code (Title 28 U.S.C.) which pertain to the jurisdiction of and practice in the United States District Courts;

(ii) the Federal Rules of Civil or Criminal Procedure;

(iii) the Rules of the United States District Court for the District of Columbia; and

(iv) the Code of Professional Responsibility as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific rule of this Court, and that he/she will faithfully adhere thereto.

(c) AFFIDAVIT OF A MEMBER OF THE BAR.

The petition shall be accompanied by an affidavit of an attorney who is a member in good standing of the Bar of this Court who has known the applicant for at least one year stating when the affiant was admitted to practice in this Court and how long and under what circumstances the attorney has known the applicant and a statement of the applicant's character and experience at the bar. The affidavit shall be on a form supplied by the Clerk.

(d) HEARING ON THE PETITION.

The petition for admission shall be placed on the calendar of the Motions Judge and shall be heard on the first Monday of each month. If the first Monday is a holiday, the petition shall be heard on the following Monday. If the petition is granted, the applicant shall take the oath of office.

(e) OATH.

The oath which each applicant for admission to the Bar of this Court shall take shall be as follows:

I do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will respect courts of justice and judicial officers; that I will well and faithfully discharge my duties as an attorney and as an officer of the court; and in the performance of those duties I will conduct myself with dignity and according to both the law and the recognized standards of ethics of our profession.

(f) ADMISSION FEE.

Each petition shall be accompanied by payment in such amount and form as determined by the Court, which the Clerk shall deposit to the credit of a fund to be used for such purposes as inure to the benefit of the members of the bench and the Bar in the administration of justice which are determined to be appropriate by the Court from time to time. This fee shall be in addition to the statutory fee for administering the oath of office and issuing the certificate of admission.

(g) CLERK AS AGENT FOR SERVICE.

By being admitted to the Bar of this Court or by being permitted to practice in this Court under Local Rule 83.2 and 83.12 or in fact practicing in this Court, the attorney shall be deemed to have designated the Clerk of the Court as agent for service of process in any disciplinary proceeding before this Court.

COMMENT TO LCvR 83.8: *This Rule clarifies the intention that continuing membership in the Bar is premised on a continuing duty to meet the requirements of this Rule. Section (a) parallels revised LCvR 83.2 regarding practice by attorneys.*

Section (b) is changed to require listing an office telephone number and the court and date admitted to practice when applying for admission. Subsection (b)(5) modifies the requirement to disclose conviction of a crime to eliminate the requirement to list minor traffic offenses. The oath in section (e) has been revised to conform to the shorter oath adopted by the Court on May 6, 1986. The duty to notify the Court of a change in address described in section (g) remains the same, but for the first time the Rule provides that the failure to maintain a current address with the Clerk of this Court constitutes a separate ground for discipline. The most significant change in LCvR 83.8 is that section (h) has been added to provide an alternate method of service on the attorney in disciplinary cases when service cannot be effectuated because the attorney has not maintained a current address. The new Rule provides that the Clerk of the Court is automatically designated as agent for service of process. The provisions in sections (g) and (h) have been added to eliminate service problems as part of an overall effort to simplify the Court's disciplinary procedures.

LCvR 83.9

RENEWAL OF MEMBERSHIP

(a) RENEWAL OF MEMBERSHIP EVERY THREE YEARS.

Each member of the bar of this Court shall renew his or her membership every three years by filing with the Clerk of the Court, on or before July 1st of every third year, a certificate in a form prescribed by the Clerk that the member is familiar with the then-current version of the Federal Rules of Civil Procedure, Federal Rules of Evidence, the Local Rules of this Court, and the Code of Professional Responsibility. If the attorney appears in criminal cases, he or she must also certify familiarity with the then-current version of the Federal Rules of Criminal Procedure and the Sentencing Guidelines. (See LCrR 44.5(b).) Members of the bar of this Court on the effective date of this rule shall file certificates by March 1, 1990, and by July 1 of every third calendar year thereafter. Subsequently admitted members shall file certificates by July 1st of every third calendar year after the year in which they were admitted. The Clerk shall notify members of this certification requirement at least 60 days before the date for filing such certificates and renewals.

(b) RENEWAL FEE.

Each certificate required by (a) above shall be accompanied by a payment of $25 in a form determined by the Clerk. The fee shall be $10 for the initial certificate filed by any person admitted to the bar of this Court after July 1, 1986. The Clerk shall deposit the fees received to the credit of the fund described in LCvR 83.8(f) to be used for the purposes specified in that rule, including the defraying of expenses of maintaining a current register of members in good standing and to administer the counseling program outlined in LCvR 83.21.

(c) FAILURE TO RENEW.

An attorney who fails to file the required certifications and pay the renewal fee shall be provisionally removed from the list of members in good standing. The name of the attorney shall be restored to the list of member in good standing upon filing of the required certificates and payment of the delinquent fee within five years after the due date. At the end of five years from the due date, the name will be permanently removed from the roll, without prejudice to an application for admission as a new member.

LCvR 83.10

COURT APPOINTED REPRESENTATION

(a) Attorneys who are members in good standing of the Bar of this Court shall be required to assist or represent the needy in civil matters before this Court whenever requested by the Court and, if necessary, without compensation and to accept appointments under the Criminal Justice Act unless exempted by rule or statute.

(b) Attorneys who are members in good standing of the Bar of the District of Columbia or of any United States Court or of the highest court of any state may assist or represent the needy in civil matters before this Court without compensation, provided that such attorneys file a certificate under LCvR 83.2(g) and comply with the provisions of LCvR 83.15.

LCvR 83.11

CIVIL PRO BONO PANEL

(a) (1) The following procedures shall govern the appointment of attorneys from the Civil Pro Bono Panel to represent *pro se* parties who are proceeding *in forma pauperis* in civil actions and cannot obtain counsel by any other means. For

each civil action duly commenced in the District by or against such a *pro se* party, the judge to whom the action is assigned may issue an order of appointment and other orders relating to representation by the appointed attorney in accordance with the Rule where the judge has determined that the interests of justice so require.

(2) **COMMITTEE ON *PRO SE* LITIGATION.**

The Chief Judge shall appoint a committee on *pro se* litigation, which shall include representatives of the District of Columbia Bar who practice primarily in federal courts, to oversee the Civil Pro Bono Panel established herein and annually report to the court on the operation of the Panel.

(3) **CIVIL PRO BONO PANEL**

(A) Attorneys who are members in good standing of the Bar of this court are required under LCvR 83.10(a) to assist or represent the needy in civil matters before this court whenever requested by the court. In light of the need for attorneys to represent indigent *pro se* litigants in civil matters before this court, the court hereby establishes a Civil Pro Bono Panel of attorneys who will be assigned to represent such litigants in such cases. Members of the Bar of this court are urged to volunteer to serve on this Panel.

(B) Attorneys who are willing to accept appointment to represent indigent *pro se* parties in civil actions may apply for designation to the Civil Pro Bono Panel on appropriate forms available from the Clerk of Court or his or her designee (hereinafter "the Clerk"). Each application shall set forth, among other things:

(i) that the attorney is a member in good standing of the Bar of this court or is in compliance with LCvR 83.10(b) of the Rules of this court;

(ii) the attorney's prior civil trial experience or trial advocacy training and any particular experience or interest in specific types of civil cases (*e.g.* FOIA cases, habeas corpus petitions, social security claims, section 1983 actions) to which attorneys from the Panel are likely to be appointed;

(iii) whether the attorney has the ability to consult and advise in languages other than English; and

(iv) whether the attorney will accept more than one appointed case per calendar year.

(C) A law firm may apply for designation to the Panel as a firm by completing the appropriate form available from the Clerk. In its application, the law firm shall set forth, among other things:

(i) the number of appointed cases per calendar year the firm is able to accept;

(ii) the ability of any firm attorneys to consult and advise in language other than English; and

(iii) the name of a member of the firm designated as the Panel Liaison. Where an action is assigned to a participating firm the order of appointment may be directed to the firm, and the firm's Panel Liaison may assign the action to a firm attorney who shall be a member in good standing of the Bar of this court or have complied with the requirements of LCvR 83.10(b) of the Rules of this court.

(D) A clinical legal education program at a law school accredited by the American Bar Association and located in the District of Columbia may apply to participate by completing the appropriate forms available from the Clerk. In the application the supervisor applying on behalf of the program shall set forth, among other things:

(i) that the supervisor is a member in good standing of the Bar of this court or has complied with the requirements of LCvR 83.10(b) of the Rules of this court;

(ii) the number of cases per calendar year the clinical program is able to accept;

(iii) the ability of the supervisor and students to consult and advise in languages other than English; and

(iv) any particular experience or interest in the specific types of civil cases to which attorneys from the Panel are likely to be appointed.

(E) Information on an application may be amended at any time by letter.

An attorney, law firm or law school clinical program may by letter withdraw from the Panel at any time.

(4) **APPLICATION FOR APPOINTED COUNSEL.**

(A) A party appearing *pro se* may file an affidavit with the court pursuant to 28 U.S.C. §1915(a) to proceed *in forma pauperis*, and may apply in writing for appointment of counsel. Failure of the *pro se* party to make a written application for appointed counsel shall not preclude such appointment with the consent of the *pro se* party.

(B) If the judge assigned the case determines, pursuant to 28 U.S.C. §1915(e), that the case should not be dismissed, the judge may then determine whether to appoint an attorney to represent such party. Such a determination should be made as soon as practicable after the action is assigned, taking into account:

(i) the nature and complexity of the action;

(ii) the potential merit of the claims as set forth in the pleading;

(iii) the inability of the *pro se* party to retain counsel by other means;

(iv) the degree to which the interests of justice will be served by appointment of counsel, including the benefit the court may derive from the assistance of the appointed counsel; and

(v) any other factors deemed appropriate by the judge to serve the interests of justice.

(C) Where a *pro se* litigant who was ineligible for appointed counsel at the outset of the litigation subsequently becomes eligible by reason of changed circumstances, the *pro se* litigant may apply to the judge for appointment of counsel within a reasonable time after the change in circumstances has occurred.

(5) **APPOINTMENT PROCEDURE.**

(A) Whenever the assigned judge concludes that appointment of counsel is warranted, the judge shall issue an order pursuant to 28 U.S.C. §1915(d) directing appointment of an attorney from the Civil Pro Bono Panel to represent the *pro se* party. The attorney shall be chosen in accordance with paragraph (B) below. If service of the summons and complaint has not yet been made, an order directing

service by the Marshal for the District or by other appropriate method of service shall accompany the appointment order.

(B) When the Clerk has received the Appointment Order from the judge, he or she shall select the next attorney on the Panel list to represent the *pro se* party in the action. Selection by the Clerk shall be made on a random basis from the list of attorneys, law firms, and law school clinical education programs (hereinafter "appointed attorney") on the Panel, unless the assigned judge advises the Clerk to select an appointed attorney with a specific expertise. The assigned judge shall not direct the appointment of a specific attorney.

(C) Before selecting an appointed attorney to represent a *pro se* litigant, the Clerk shall determine whether the litigant has any other case pending before the Court and whether an attorney has been appointed in such case. Where an appointed attorney is already representing the litigant in a prior action, such attorney is encouraged but not required to represent the litigant in the new action. If the previously appointed counsel declines, the Clerk shall select another attorney, at random, in accordance with this Rule.

(D) The Clerk shall send written notice of the appointment to the appointed attorney. Copies of the Appointment Order, this Rule governing procedures for appointment, any pleadings already filed in the case, and any relevant correspondence or other documents shall accompany such notice.

(E) Upon receiving such notice, the appointed attorney shall enter a notice of appearance or seek relief from the appointment pursuant to Section (7) of this Rule within 30 days of the appointment, or within such additional period permitted by the assigned judge for good cause shown.

(F) When the appointed attorney has entered his or her notice of appearance in the case, the attorney shall immediately also send written notice of the appointment, including his or her name, address, telephone number, and bar identification number to all parties in the action.

(6) **RESPONSIBILITIES OF THE APPOINTED ATTORNEY.**

(A) Upon receiving a notice of appointment and entering an appearance in the action, the appointed attorney shall promptly communicate, orally or in writing, with the newly represented party concerning the

action.

(B) The appointed attorney should discuss fully the merits of the dispute with the party, and explore with the party the possibility of resolving the dispute in other forums, including but not limited to administrative forums.

(C) If the party decides to prosecute or defend the action after consultation with the appointed attorney, the appointed attorney shall proceed to represent the party in the action, unless or until the attorney-client relationship is terminated as provided in this Rule.

(D) Once the appointed attorney accepts the case and the client, the attorney shall be free in the exercise of his or her professional judgment, but not required, to represent the client in or out of court in any other matter that would be appropriate in the case of a retained attorney and a fee-paying client.

(E) Where an order of appointment has been directed to a participating law firm or law school clinical legal education program, the action shall remain the responsibility of the firm or of the clinical legal education program, notwithstanding the firm's or the program's assignment of the case to one of its attorneys.

(7) **RELIEF FROM APPOINTMENT.**

(A) An appointed attorney may apply to be relieved of an order of appointment only on the following grounds:

(i) a conflict of interest precludes the attorney from representing the party in the action; or

(ii) a substantial disagreement exists between the attorney and the party on litigation strategy; or

(iii) the attorney's opinion formed after reasonable inquiry, the claim or defense is not well grounded in fact; or is not warranted under existing law and cannot be supported by good faith argument of extension, modification, or reversal of existing law, or the party is proceeding for purposes of harassment or other improper purpose; or

(iv) because of the temporary burden of other professional commitments, the attorney lacks the time necessary to

represent the party; or

(v) on such other grounds acceptable to the court for good cause shown.

(B) An attorney seeking to be relieved from appointment for the reasons set forth in section A (I), (ii), or (iii) above shall file a Notice of Withdrawal with the court, with proof of service upon the client, stating without identification of reasons, that "grounds for relief from appointment under Section (7)(A)(I), (ii), or (iii) exist." Such Notice will effect withdrawal without any court action. An attorney wishing to be relieved for the reasons set forth in Section (7)(A)(iv) or (v) shall file a Motion for Withdrawal setting forth the circumstances constituting cause for withdrawal. Withdrawal on Motion will require court approval.

(C) An application for relief from appointment must be made to the assigned judge within 30 days after the attorney's receipt of the order of appointment, or within such additional period permitted by the assigned judge for good cause shown.

(D) An application for relief from appointment shall be furnished to the client and filed under seal, and shall not be served upon or otherwise made available to the opposing party.

(E) If an application for relief from an order of appointment is granted, the judge may issue an order directing appointment of another attorney to represent the party, or such other orders as may be deemed appropriate. The judge shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se*.

(8) **DISCHARGE.**

(A) A party for whom an attorney has been appointed shall be permitted to request the judge to discharge the attorney from the representation and to either appoint another attorney or let the party proceed *pro se*.

(B) When such a request is made, the judge shall forthwith issue an order discharging the appointed attorney from further representation of the party in the action. In such cases, the judge may issue a further order directing appointment of another attorney to undertake the representation, or such other orders as may be deemed appropriate. The judge shall also have the discretion not to issue a further order of

appointment in such cases. Where a party requests discharge of a second appointed attorney, no additional appointments shall ordinarily be made.

(9) **EXPENSES.**

(A) There being no public funds available for this purpose at this time, the appointed attorney or the law firm or law school clinical legal program with which he or she is affiliated should be prepared to advance the reasonable expenses of the litigation.

(B) The appointed attorney shall not condition the representation upon the client's advancing the cost of the litigation expenses. The appointed attorney may enter into an agreement with the client wherein the client agrees:

(i) any monetary recovery that may be obtained through the representation, and/or

(ii) to assign to the attorney any amounts awarded to the client as litigation expenses pursuant to law, including case law, authorizing the award of such expenses.

(10) **ATTORNEY FEES.**

(A) The appointed attorney shall represent the client without receiving a fee, except that in cases where it appears the client is reasonably likely to be entitled to recover attorney fees or a monetary award, the appointed attorney may:

(i) enter into a written agreement with the client, assigning to the attorney any amounts recovered by the client as attorneys' fees pursuant to laws, including case law, authorizing the award of attorneys' fees; and/or

(ii) propose to the client a contingent fee arrangement providing for the payment of a reasonable fee out of any funds recovered by the client as a result of the representation. A contingent fee arrangement shall provide that the amount of any payments received by the attorney pursuant to an assignment agreement under subparagraph (I) above shall be credited against the client's fee obligations under such a

contingent fee arrangement. Any such contingent fee arrangement shall be in writing, executed by both the attorney and the client, and submitted to the court for its approval; or

(iii) seek to assist the client in retaining other counsel on a compensated basis, subject to the client's consent to such a change in representation and to the court's approval of a request for relief from appointment under subparagraph (7)(A)(v) on the ground that the party no longer requires appointed counsel for the purpose of pursuing the claim, or, if the appointed attorney is unable to obtain such other counsel for the client, he or she shall then continue the representation to its conclusion, either without receiving a fee, or pursuant to an assignment or contingent fee arrangement as provided in subparagraphs (i) and (ii) above.

(B) In cases such as certain social security disability cases, in which the applicable statue authorizes the award of attorneys' fees to be paid out of the amounts awarded to the plaintiff, the appointed attorney shall advise the client of the possibility of such an award.

(11) **DURATION OF REPRESENTATION.**

(A) An appointed attorney shall represent the party in the action in the trial court from the date he or she enters an appearance until he or she has been relieved from the appointment by the court according to the provisions of this Rule or until a final judgment is entered in the action.

(B) If the party desires to take an appeal from a final judgment or appealable interlocutory order or if such judgment or order is appealed by another party, or if the matter is remanded to an administrative forum, the appointed attorney is encouraged but not required to represent the party on the appeal, and in any proceeding, judicial or administrative, which may ensue upon an order of remand, unless a conflict of interest would prevent such representation.

(C) If the appointed attorney elects not to represent the party on an appeal or in a proceeding upon remand, the attorney shall advise the party of all required steps to be taken in perfecting the appeal or appearing in the proceeding on remand. Upon request of the *pro se* party the attorney shall file the notice of appeal. Such advise shall include available sources of appointed counsel.

(12) **TRAINING SESSIONS.**

The *Pro Se* Litigation Committee shall, in cooperation with the District of Columbia Bar, organize and conduct educational programs to train and advise attorneys on the Civil Pro Bono Panel in the preparation and trial of the most common types of civil actions involving *pro se* parties brought before this court.

(13) **APPOINTMENT OF NON-PANEL ATTORNEYS OR LEGAL ORGANIZATIONS.**

Nothing in this Rule shall be interpreted as preventing a judge from requesting a legal organization that is not on the Civil Pro Bono Panel to represent a *pro se* litigant who is proceeding *in forma pauperis* in this court.

LCvR 83.12

RULES OF DISCIPLINARY ENFORCEMENT

(a) PROMULGATION OF RULES

This Court, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it under LCvR 83.2 or 83.8 of these Rules, or who are admitted for the purpose of a particular proceeding *(pro hac vice)*, or who otherwise appear before the Court, promulgates the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated. These Rules shall become effective on May 1, 1987, provided, however, that any formal disciplinary proceeding then pending before this Court shall be concluded under the procedure existing prior to the effective date of these Rules.

(b) ATTORNEYS SUBJECT TO RULES.

These Rules shall apply to all attorneys admitted to membership in the Bar of this Court, to all attorneys permitted to practice before this Court under LCvR 83.2, and to all attorneys who appear before this Court or who participate in proceedings, whether admitted or not. All attorneys to whom these Rules apply shall be subject to the disciplinary jurisdiction of this Court for any alleged misconduct arising in connection with such proceeding. All such attorneys shall also be deemed thereby to have designated the Clerk of the Court as agent for service of process under these Rules governing discipline and disciplinary proceedings.

COMMENT TO LCvR 83.12: *Section (a) incorporates the former Preamble to the Rules of Disciplinary Enforcement. Section (b) is new and was added to make clear that the Court has authority to discipline all attorneys who appear before it, whether admitted or not. Because this Rule is broader in its application than either LCvR 83.2 or 83.8, it restates the provision that all attorneys subject to these Rules shall be deemed to have designated the Clerk of the Court as agent for service of process for purposes of the disciplinary rules.*

LCvR 83.13

DISCIPLINARY PANEL

(a) APPOINTMENT.

The Chief Judge shall appoint three judges of the Court to be known as the Disciplinary Panel and shall appoint two additional judges to serve as alternate members. The Disciplinary Panel shall have jurisdiction over all judicial proceedings involving the disbarment, suspension, censure or other discipline of attorneys subject to these Rules.

(b) POWERS OF INDIVIDUAL JUDGES

Nothing contained in these Rules shall be construed to deny to this Court or to any individual judge or United States Magistrate Judge thereof or to the United States Bankruptcy Judge such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure, or to deprive any judge or magistrate judge of his/her inherent power of discipline for conduct committed in the presence of the Court.

COMMENT TO LCvR 83.13: *Section (a) was rewritten for clarity and brevity to set out the composition and purpose of the Disciplinary Panel. Section (b)makes clear the power of an individual judge, Bankruptcy Judge or Magistrate Judge, to maintain control over proceedings through the contempt power or otherwise to discipline for conduct in the presence of the Court.*

LCvR 83.14

COMMITTEE ON GRIEVANCES

(a) APPOINTMENT.

There shall be established a standing committee appointed by the Court to be known as the Committee on Grievances (the "Committee") consisting of six or more members of the Bar of this Court appointed for terms of three years and until their successors have been appointed. The terms of the members shall be staggered so as to provide continuity. No member of the Committee on Grievances shall serve more than two consecutive terms.

The Court shall designate a Chairman of the Committee and a Vice Chairman who shall act in the absence or disability of the Chairman. Members of the Committee shall serve without compensation except that the Court may authorize payments in lieu of expenses from fees collected by the Clerk pursuant to Rule LCvR 83.8(f).

(b) DUTIES.

The Committee shall be charged with receiving, investigating, considering and acting upon complaints against all attorneys subject to these Rules. LCvR 83.12(b) relating to disbarment, suspension, censure, reprimand or other disciplinary action, and petitions for reinstatement of attorneys.

(c) CLERK.

The Clerk shall with approval of the Court, appoint a Clerk to the Committee who shall have all powers vested in a Deputy Clerk of the Court. The Clerk to the Committee shall assist the Committee, maintain records of its proceedings, investigations and prosecutions, and proceed as otherwise set forth in these Rules.

(d) CONFIDENTIALITY AND IMMUNITY.

All proceedings before the Committee involving allegations of misconduct of an attorney and all documents and charges presented to the Committee shall remain confidential and privileged. All formal charges prepared by the Committee and directed to be filed by the Court, attorney or grievance cases filed with the Clerk of the Court, court orders, and subsequent pleadings, answers or responses filed therein shall be matters of public record.

All meetings and hearings of the Committee shall be held *in camera* and the business conducted therein shall remain confidential and privileged. The Committee's Chairman or, in the Chairman's absence or disability, the Vice Chairman shall have discretion in determining the manner and extent of cooperating with disciplinary agencies from other jurisdictions. All records and minutes of the Committee shall be maintained under seal and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power delegated by the Court, Committee members shall be absolutely immune from suit for any conduct in connection with their duties. Complaints submitted to the Committee on Grievances pursuant to LCvR 83.16 shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

COMMENT TO LCvR 83.14: *Section c governs the responsibilities of the Clerk to the Committee. The most important change is section (d) which is added to describe the practice of the Committee on Grievances and the Court relating to confidentiality and disclosure of disciplinary proceedings. It clarifies existing practice by explicitly stating which proceedings are confidential and which are not. The Rule does not bar disclosure of information by order of the Chief Judge or his/her designee in connection with judicial appointments. In addition, consistent with rules of other courts and recent case law, the Rule provides that Committee members shall be immune from suit for conduct in the course of their duties in exercising the power delegated to the Committee members by the Court.*

LCvR 83.15

OBLIGATIONS OF ATTORNEYS

(a) RULES OF PROFESSIONAL CONDUCT.

Violations of the Rules of Professional Conduct (as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific Rule of this Court) by attorneys subject to these Rules shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship

(b) DUTY TO NOTIFY THE COURT.

It shall be the duty of each attorney subject to these Rules to notify promptly the Clerk of this Court of:

(1) conviction for any crime other than minor traffic offenses, giving the name of the court in which the attorney was convicted, the date of conviction, docket number, the offense for which the attorney was convicted and the sentence;

(2) any disbarment, suspension or other public discipline imposed by any federal, state or local court, giving the name of the court, the date of such disbarment, suspension or other public discipline, the docket number, and a description of the discipline imposed and the offense committed in connection therewith; or any disbarment by consent or resignation while an investigation into allegations of misconduct is pending;

(3) whether the attorney has ever been held in contempt of court and if so, the nature of the contempt and the final disposition thereof; and

(4) any change in the attorney's office address or telephone number as provided for in (c) below.

Failure to provide the notice required by this paragraph may constitute a separate ground for discipline.

(c) CHANGES IN ADDRESS.

Notice to the Clerk of any change in the attorney's address or telephone number (see (b)(4) above) shall be filed in writing within 10 days of the change. The attorney shall also within 10 days file a *praecipe* reflecting such change in each case which the attorney has pending before this Court, serving a copy upon each of the attorneys in these cases.

(d) DUTIES OF THE CLERK UPON NOTIFICATION.

Upon being informed that an attorney subject to these Rules has been convicted of any crime, disciplined by any court, held in contempt by any court, disbarred by consent, or resigned from any Bar pending an investigation into allegations of misconduct, the Clerk shall promptly obtain a certified or exemplified copy of such conviction, disciplinary judgment or other court order and present it to the Committee which shall proceed in accordance with these Rules.

COMMENT TO LCvR 83.15: *Section (b) combines several former Rules relating to an attorney's obligations under these Rules to notify the Court of certain facts: (1) conviction of crime; (2) disbarment, suspension or public discipline; (3) citation for contempt; and (4) change in address or telephone number. The duty of notification in LCvR 83.15(b) regarding public discipline does not include sanctions imposed under civil rules other than contempt as specified in subsection (b)(3). Failure to provide notice may constitute grounds for disciplinary action.*

Section (c) has been added to impose on the Clerk to the Grievance Committee the duty to obtain a certified or exemplified copy of such conviction, disciplinary judgment or court order.

LCvR 83.16

GROUNDS AND PROCEDURES FOR DISCIPLINE

(a) SERVICE OF PROCESS.

Service of process under these Rules shall be made by certified mail addressed to the attorney (hereinafter attorney or respondent) at the last known address or at the last recorded address filed with the Clerk of the Court as required pursuant to LCvR 83.8(g). If service cannot be so made, service shall be sufficient when served on the Clerk of this Court and all time periods specified in these Rules shall run from the time of such service. If service is made by serving the Clerk, a courtesy copy shall be mailed to the respondent by first class mail at his/her last known address.

(b) ATTORNEYS CONVICTED OF CRIMES.

(l) **FELONIES.**

Upon presentation to the Disciplinary Panel of a certified copy of a court record demonstrating that an attorney subject to these Rules has been found guilty of a felony in any court, the attorney shall be immediately suspended from practicing before this Court by order of the Disciplinary Panel, whether the finding resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of an appeal. The Disciplinary Panel may defer entry of the order or set aside an order of suspension when it appears to the Panel in the interest of justice to do so.

Upon presentation of proof that the conviction is final, and regardless of the pendency of an appeal or other review of the conviction or of a Petition for *Writ of Certiorari*, the respondent shall be disbarred and the attorney's name shall be struck from the roll of members of the Bar of this Court by order of the Disciplinary Panel, unless within a period of 30 days from the date of the order, the respondent shows cause why disbarment would not be in the interest of justice.

(2) **MISDEMEANORS.**

An attorney subject to these Rules who shall be convicted in any court of a misdemeanor may be disciplined in such manner and to such extent as the Disciplinary Panel may determine and may upon petition of the Committee and for good cause shown, be temporarily suspended pending a final decision of the Disciplinary Panel.

Upon receipt of a certified copy of such judgment of conviction, the Committee shall obtain an order from the Disciplinary Panel requiring the respondent to show cause within thirty days after service in accordance with LCvR 83.16(a) why the attorney should not be disciplined. If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response thereto if it so desires. The Committee shall serve a copy of its response, if any, upon the respondent or respondent's counsel of record by first class mail or, failing that, in accordance with LCvR 83.16(a).

Upon the filing of the respondent's Answer to the Order to Show Cause and any response thereto by the Committee, or if no answer has been filed, upon the filing of a recommendation by the Committee, the matter shall be promptly submitted to the Disciplinary Panel for its consideration. The Disciplinary Panel may, in its discretion, schedule a hearing. If a hearing is scheduled, the Chairman or designated member(s) of the Committee shall appear at the hearing and offer proof or arguments pertinent to the issues. After the hearing or, if no hearing is scheduled, upon a review of the papers submitted, the Disciplinary Panel shall take such action as these Rules and justice may require. In all proceedings hereunder the certified copy of judgment of conviction shall constitute conclusive proof of the respondent's guilt of the conduct for which the respondent was convicted. The pendency of an appeal or other review of the conviction or of a petition for *writ of certiorari* will not constitute a ground for failing to proceed in accordance with this Rule absent extraordinary circumstances and for good cause shown.

(3) **REINSTATEMENT FOLLOWING SUSPENSION.**

An attorney suspended under LCvR 83.16(b)(1) or (2) will be reinstated immediately upon the filing of a certificate demonstrating that the conviction has been reversed, vacated, or set aside, but the reinstatement will not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of the available evidence.

(c) DISCIPLINE IMPOSED BY OTHER COURTS.

(l) **POLICY OF RECIPROCAL DISCIPLINE.**

An attorney subject to these Rules who has been suspended for more than 30 days or disbarred by another court shall be automatically suspended from practice in this Court. The suspension shall be effective upon service of a Temporary Suspension and Show Cause Order in accordance with these Rules. An attorney who has been suspended for 30 days or less by another court shall have the fact of that discipline noted by the Clerk on the Lawyers' Register maintained by this Court, and no further proceedings shall be had thereon, unless the Committee on Grievances shall determine that the facts underlying the discipline warrant a proceeding for the imposition of discipline by this Court. Notations on the Lawyers' Register do not constitute discipline imposed by the Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

COMMENT TO LCvR 83.16(c)(1): *Typically, an order* of *suspension entered by the District* of *Columbia Court of Appeals by its terms is effective 30 days from the date of its entry. The disciplinary Panel of this Court signs its Temporary Suspension and Show Cause Order after the effective date of suspension order in the other court.*

Since a respondent has 30 days within which to answer an order to show cause in this Court, a short-term suspension by another court has often expired and a respondent automatically reinstated in the other court before the time an answer is due in this Court. Thus, no useful purpose is served by initiating reciprocal disciplinary proceedings in cases involving suspensions of 30 days or less.

(2) **ISSUANCE OF TEMPORARY SUSPENSION AND SHOW CAUSE ORDER**

Upon receipt of a certified or exemplified copy of a judgment or order from another court suspending or disbarring an attorney subject to these Rules, the Disciplinary Panel of this Court shall issue a Temporary Suspension and, Show Cause Order suspending the attorney from practice before this Court pending a final disposition under these Rules, except where it finds extraordinary circumstances. Respondent may answer and show cause within 30 days after service of the Order why the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(3) **DUTIES OF THE CLERK.**

The Clerk to the Committee thereupon shall cause to be served on the attorney the following documents: a copy of the judgment or order of

discipline imposed by the other court; a certified copy of this Court's Temporary Suspension and Show Cause Order; and a copy of LCvR 83.16.

(4) **PROCEDURES WHEN RESPONDENT FAILS TO ANSWER.**

If respondent fails to answer to show cause within 30 days from service of the Temporary Suspension and Show Cause Order, this Court shall issue an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it deems appropriate, unless it finds that upon the face of the record on which the discipline by the other court is predicated it clearly appears:

(i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) that proof establishing the misconduct gives rise to a reasonable doubt that this Court could not, consistent with its duty, accept as final the conclusion of the disciplining court; or

(iii) that the imposition of the same discipline by this Court would result in grave injustice; or

(iv) that the misconduct established is deemed by this Court to warrant substantially different discipline; or

(v) that the misconduct on which the discipline was imposed by the other court does not constitute misconduct in the District of Columbia.

Where this Court determines that any of these elements exist, it shall enter such other order as it deems appropriate.

(5) **PROCEDURES WHEN RESPONDENT ANSWERS.**

If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response and make a recommendation to the Court. Upon consideration of the papers submitted by the respondent and by the Committee, the Court shall either (l) enter an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it might find appropriate, or (2) if the Court finds that, upon the face of the record on which the discipline in another jurisdiction is predicated it clearly appears that one or more of the factors listed in subparagraphs (4)(I)-(v) exists, it shall enter such other order as it deems appropriate.

(6) **CENSURE OR REPRIMAND.**

Where discipline imposed by the other court is a public censure or reprimand, the Clerk shall note the fact of that discipline on the Lawyers' Register maintained by this Court, and no further proceedings shall be had thereon. Notations on the Lawyers' Register do not constitute discipline imposed by this Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

(7) **STAYS**

If the discipline imposed by another court has been stayed, any reciprocal discipline proceeding in this Court may, upon motion of the respondent, be deferred by order of this Court until the stay expires and until further order of this Court. In the absence of a stay of discipline imposed by such other court, neither a motion for reconsideration or motion for rehearing or rehearing *en banc* filed in the other court or petition for a *writ of certiorari* will be the basis for a deferral of the proceedings in this Court absent good cause shown.

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT.

(1) **COMPLAINTS GENERALLY.**

Any person seeking to charge an attorney subject to the Rules with any act or omission which may justify disbarment, suspension, censure, reprimand or other discipline shall do so in writing, subscribed and under oath or affirmed under the penalty of perjury pursuant to the United States Code, Title 28, Section 1746. The Complaint shall be presented to the Committee by lodging it with the Clerk to the Committee. The Committee shall have the inherent power without any formal Complaint to inquire into misconduct of attorneys subject to these Rules.

(2) **COMPLAINTS BY A COURT OR A JUDGE.**

Any court, judge or United States magistrate judge in the District of Columbia may refer to the Committee the name of any attorney subject to these Rules on a Complaint that such attorney has engaged in conduct which, if substantiated, would warrant the imposition of discipline.

(3) **INVESTIGATION.**

Complaints received by the Committee shall be reviewed to determine if the Complaint is appropriate for action. If the Complaint is insufficient on its face to warrant investigation, the Committee may discharge the Complaint and

advise the complainant that no action will be taken. If the Committee decides that the Complaint or information otherwise received by the Committee requires action, the Committee is authorized to (l) investigate the matter itself; (2) refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals; (3) informally seek information from the respondent; or (4) require a formal Answer from the respondent in accordance with subsection (d)(4). To further any investigation, the Chairman, or in his absence, the Vice Chairman is authorized to issue subpoenas commanding the production of books, papers, documents, records or tangible items. If following any of these actions the Committee decides no further action is warranted, the Committee may, if its investigation was based on receipt of a complaint, discharge the Complaint and so inform the complainant and the respondent. If the Committee's investigation was based on information otherwise received and the respondent was made aware by the Committee of its investigation, the Committee shall notify the respondent that it has decided that no further action is warranted.

(4) **SERVICE OF COMPLAINT; ANSWER.**

If the Committee determines that a formal Answer is required from the respondent, a copy of the Complaint as received by the Committee or as prepared by it based on information otherwise received shall be served upon the respondent and he/she shall be required to answer within 30 days after the date of service. An Answer to a Complaint shall be in writing, subscribed and under oath or affirmed under the penalty of perjury in a form prescribed by the provisions of the United States Code, Title 28, Section 1746 and shall be accompanied by a list of all courts before which the respondent is admitted to practice. Upon receipt of the Answer, the Clerk to the Committee shall mail a copy thereof to the complainant, if there is one, who may reply to the Answer within 14 days of the date of the transmittal letter from the Clerk of the Committee. A copy of any reply to the Answer to the Complaint shall be served upon the respondent. If a respondent is served with a copy of a Complaint by the Committee and fails to answer within the time allowed by these Rules, the matter shall be certified to the Disciplinary Panel for its appropriate action.

(5) **SUBCOMMITTEE OF INQUIRY.**

The Chairman may designate three members of the Committee to sit as a Subcommittee of Inquiry and shall designate one as Chairman of the Subcommittee. The Chairman of the Subcommittee of Inquiry is hereby designated and appointed a Master with authority to cause subpoenas to be issued commanding the attendance of witnesses and/or parties at any hearings, as well as commanding the production of books, papers, documents, records

or tangible things designated therein at such hearing. The Chairman of the Subcommittee as such Master is further authorized to administer oaths to the parties and witnesses. Should any witness and/or party fail or refuse to attend or to testify under oath, the witness' or party's name may be certified to the Disciplinary Panel of the Court, whereupon the Disciplinary Panel may refer the matter to the United States Attorney or to the U.S. Department of Justice to bring formal criminal contempt charges against such witness and/or party for so refusing. If the witness or party is found guilty of contempt, the Court shall administer such punishment as may be appropriate.

(6) **RIGHT TO COUNSEL IN DISCIPLINARY PROCEEDINGS.**

The respondent shall be entitled to be represented by counsel who may appear on the respondent's behalf at any time during the investigation or after a Complaint has been served upon respondent.

(7) **SUBMISSION OF CHARGES.**

If following investigation the Subcommittee of Inquiry recommends, and a majority of the Committee concurs, the Committee shall prepare charges and submit them to the Disciplinary Panel of the Court or, in its discretion with or without preparing charges refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals with a request that that Office take whatever action it deems appropriate. If submitted to the Disciplinary Panel and the Panel orders the charges to be filed, the Clerk shall file them and issue a summons directed to the respondent, commanding respondent to answer. The summons and a copy of the charges shall be served in accordance with these Rules. The respondent shall answer the charges within 30 days after the effective date of service and shall file with the Answer a list of all courts before which the attorney is admitted to practice. If no Answer is received within 30 days or such additional time as the Disciplinary Panel may allow, the charges may be taken as admitted and the Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order.

(8) **HEARINGS AND ORDERS OF THE DISCIPLINARY PANEL OF THE COURT.**

When the respondent has filed an Answer, the case shall be set down for hearing before the Disciplinary Panel and a member of the Committee designated by the Chairman shall appear at the hearing to offer proof or arguments pertinent to the issues. If the charges are sustained by clear and convincing evidence, the Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order. Any knowing violation of the order of judgment shall be deemed a contempt of court.

(e) DISBARMENT ON CONSENT.

(l) **BY THIS COURT.**

Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may not resign from this bar, but may consent to disbarment. The attorney must deliver to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(vii) the attorney's consent is freely and voluntarily given; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting; and

(ii) the attorney is aware that there is presently pending an investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth.

Upon receipt of the required affidavit, the Disciplinary Panel shall enter an order disbarring the attorney. The order disbarring the attorney on consent shall be a matter of public record, but the affidavit shall be sealed and not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(2) **BY OTHER COURTS.**

Any attorney admitted to practice before this Court who shall be disbarred on consent or who shall resign from the Bar of any court of the United States or

from the Bar of any State, Territory, District, Commonwealth or Possession of the United States while an investigation into allegations of misconduct is pending, shall so advise this Court and submit a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation. If no such order or judgment is submitted, the Clerk shall obtain it from the other court. The Disciplinary Panel thereupon shall enter an order disbarring the attorney and directing that the attorney's name be stricken from the roll of attorneys admitted to practice before this Court unless the attorney shows why it would not be in the interest of justice to do so. A certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation is conclusive proof of such disbarment on consent or resignation.

COMMENT TO LCvR 83.16: LCvR 83.16 outlines the grounds and procedures for discipline of: attorneys convicted of crimes; attorneys disciplined by other courts; attorneys who are the subject of complaints of misconduct filed in this Court; and attorneys disbarred on consent.

Section (a) governs service of process in disciplinary proceedings. It makes clear that the primary method of service is by mail and the alternative method is by service on the Clerk of the Court.

Section (b) provides for immediate suspension upon proof of a felony conviction. The Disciplinary Panel may defer or set aside entry of the order in the interest of justice. This provision is to be invoked only in extraordinary circumstances. The Rule further provides for disbarment upon final conviction, regardless of the pendency of an appeal or other review, unless respondent shows cause within 30 days why disbarment would not be in the interest of justice.

With respect to misdemeanors, the Rule essentially maintains the show cause procedures currently in effect under former Rule 4-3(I)(b). With respect to both felonies and misdemeanors, the Rule makes clear that the pendency of an appeal or other review of conviction or of a petition for writ of certiorari does not affect the imposition of discipline. This provision was added to solve the recurring problem of a year or more delay attendant on petitions for certiorari, during which time the attorney might be permitted to practice before this Court.

Subsection (b)(3) has been added to provide for reinstatement after suspension upon proof that the underlying conviction has been reversed, vacated or set aside.

Section (c) governs discipline imposed by other courts and is a significant change from former Rule 4-3(II). The new Rule provides that an attorney subject to these Rules who is suspended or disbarred by another court shall be suspended from practice in this court during the pendency of disciplinary proceedings. The procedures adopted are consistent with the practice in the United States Supreme Court, many United States Courts of Appeals and a number of other district courts. By providing the attorney an opportunity to show cause why reciprocal discipline should not be imposed, the Rule satisfies the due process requirements of the relevant Supreme Court cases. See, e.g., In Re Ruffalo, 390 U.S 544 (1968); Theard v. United States, 354 U.S. 278 (1957); Selling v. Radford, 243 U.S. 46 (1917). The new Rule corrects the inadequacies of the former show cause procedures that permitted a respondent to continue to practice during the pendency of disciplinary proceedings. The revised procedure, requiring immediate temporary suspension followed by a show cause order, shifts the burden of going forward to the respondent to show cause why identical reciprocal discipline should not be imposed.

The new provision for suspension eliminates the procedure of noting short-term suspensions imposed by other courts on this Court's records, rather than imposing reciprocal discipline (former Rule 4-3(I)(e)). Those procedures were unworkable and caused inequities. Under the new procedures, censures and reprimands will be noted, but reciprocal discipline proceedings will be followed in the case of all suspensions or disbarments.

Subsection (c)(7) has been added to make clear that if discipline imposed by another court has been stayed, reciprocal discipline in this Court may be deferred. However, in the absence of a stay, neither a motion for reconsideration nor a motion for rehearing or rehearing en banc nor a petition for writ of certiorari serves to defer disciplinary proceedings in this Court absent good cause shown.

Section (d) sets forth in one section all the procedures relating to Complaints filed in this Court. Subsection (d)(1) specifies that the Committee has the inherent power to inquire into misconduct of attorneys subject to these Rules, without formal Complaint. Subsection (d)(3) has been revised to grant to the Committee at the investigative stage as well as at the hearing stage the authority to use subpoenas commanding the production of books, papers, documents, records or tangible items. It also specifies that the Committee can act based on a Complaint or information otherwise received, and is authorized to discharge a Complaint during the investigative stage.

Subsection (d)(7) clarifies existing practice by stating that if a respondent fails to respond after a formal complaint is filed, the Disciplinary Panel has the power to take the allegations as admitted and impose appropriate discipline. Subsection (d)(8) sets forth the clear and convincing standard of proof for the imposition of discipline.

Section (e) governs disbarment on consent. It is revised to make clear that there can be disbarment on consent in this Court or reciprocal disbarment for disbarment on consent by another court. It changes the former Rule by providing that an attorney under investigation or subject to pending proceedings involving allegations of misconduct may not resign from the Bar of this Court, but may only consent to disbarment.

Revised subsection (e)(1) governing disbarment on consent by this Court makes two substantive changes. First it permits the attorney affidavit, which is the predicate for disbarment on consent, to be filed under seal. Second, it eliminates the former requirement that an affidavit filed by an attorney seeking disbarment on consent contain an acknowledgment that the material facts alleged are true. This revision was adopted because it was felt that it was in the public interest to encourage consent disbarments.

With respect to disbarment on consent or resignation in other courts, subsection (e)(2) is changed only to the extent of providing the attorney an opportunity to show cause why such disbarment would not be in the interest of justice.

LCvR 83.17

NOTIFICATION TO DISCIPLINARY AUTHORITIES

(a) NOTIFICATION TO OTHER COURTS.

When any person subject to these Rules has been convicted of any crime or disbarred, suspended, reprimanded, censured or disbarred on consent by this Court, the Clerk shall within ten days transmit to the disciplinary authorities in any other jurisdictions or courts in which the attorney is admitted to practice, a certified copy of the conviction or a certified copy of the judgment or order of disbarment, suspension, reprimand, censure or disbarment on consent. The Clerk shall also serve a certified copy of such judgment or order and a copy of such notice upon the respondent in accordance with LCvR 83.16(a).

(b) NOTIFICATION TO NATIONAL DISCIPLINE DATA BANK.

The Clerk shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

COMMENT TO LCvR 83.17: *LCvR 83.17 has been adopted from the Model Rules of Disciplinary Enforcement. The purpose is to foster cooperation in reporting disciplinary actions.*

LCvR 83.18

REINSTATEMENT

(a) AFTER DISBARMENT OR SUSPENSION.

An attorney suspended for a specific period shall be automatically reinstated at the end of the period upon the filing with the Court of an affidavit of compliance with the provisions of the order of suspension (including, in the case of reciprocal discipline, proof that the attorney has been reinstated by the court in which the attorney was disciplined). An attorney suspended for an indefinite period may not resume practice until the suspension is terminated by an order of the Disciplinary Panel. A disbarred attorney may not resume practice until reinstated by order of the Disciplinary Panel.

(b) TIME OF APPLICATION FOLLOWING DISBARMENT OR SUSPENSION FOR INDEFINITE PERIOD.

A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the order of disbarment. A person who has been suspended for an indefinite period may not apply for termination of the suspension until after the expiration of the mini-mum period fixed by the order of suspension or, if no minimum period is fixed, for a period of three years, or, in the case of reciprocal discipline, upon proof that the attorney has been reinstated by the court in which the attorney was disciplined.

(c) HEARING ON APPLICATION.

Petitions for reinstatement under this Rule shall be filed with the Clerk to the Committee. The Committee shall have 30 days within which to respond. The attorney shall have the burden of demonstrating by clear and convincing evidence that he/she has met the conditions of reinstatement or termination of suspension as provided for under these Rules. The Disciplinary Panel may hold a hearing on the application or, in its discretion, decide the matter on the basis of the papers filed.

(d) CONDITIONS OF REINSTATEMENT OR TERMINATION OF SUSPENSION.

If the Disciplinary Panel finds the attorney unfit to resume the practice of law, the petition for reinstatement shall be denied. If the Disciplinary Panel finds the attorney fit to resume the practice of law, it shall issue an order reinstating the attorney or terminating the suspension. The order may make reinstatement or termination of the suspension conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the attorney's misconduct which led to the suspension or disbarment. In the discretion of the Disciplinary Panel, reinstatement or termination of suspension may also be conditioned upon the furnishing of proof of competency and learning in the law, which proof may include certification by the Bar Examiners of a State or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of indefinite suspension or disbarment.

(e) SUCCESSIVE PETITIONS.

No petition for reinstatement or for termination of suspension under this Rule shall be filed within one year following an order denying a petition for reinstatement or termination of suspension filed by or on behalf of the same person.

(f) NOTIFICATION OF REINSTATEMENT.

Upon entry of an Order of Reinstatement or an Order Terminating Suspension, the Clerk shall promptly notify the same persons who notified of the disciplinary orders.

COMMENT TO LCvR 83.18: *Section (a) is modified to include the provision that to apply for reinstatement in the case of reciprocal discipline, the attorney must submit proof of reinstatement by the court in which the attorney was disciplined. Section (c) is modified to provide that the Committee will have 30 days to respond to a petition for reinstatement. The provision outlining the respondent's burden in obtaining reinstatement is modified to require proof that the respondent has met the conditions of reinstatement under these Rules.*

Section (d) sets forth the conditions for reinstatement, in substance the same as former Rule 4-3(VII)(d). It is changed to state that the Disciplinary Panel has the discretion to condition reinstatement or termination of suspension upon proof of competency and learning in the law, eliminating the provision that such proof would only be required if the disbarment or suspension lasted for five years or more. Section (f) has been added to provide for notification of reinstatement to the attorney.

LCvR 83.19

PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE MENTALLY INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED

(a) ATTORNEYS DECLARED INCOMPETENT OR PHYSICALLY INFIRM.

If an attorney who is subject to these Rules has been judicially declared incompetent or involuntarily committed to a mental hospital, or has resigned from the bar of any court or been suspended from such a bar on the basis of such mental incompetence or incapacity or on the basis of physical infirmity or illness, the Disciplinary Panel, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon such attorney, his/her guardian and the administrator of any hospital or other institution if the Court is informed such attorney is a patient thereof in such manner as the Disciplinary Panel may direct.

(b) ATTORNEYS ALLEGED TO BE INCAPACITATED.

Whenever the Committee shall petition the Disciplinary Panel to determine whether an attorney who is subject to these Rules is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. Failure or refusal to submit to such examination shall be *prima facie* evidence of incapacity. If upon due consideration of the matter the Disciplinary Panel concludes that the attorney is incapacitated from continuing to practice law it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until further order of the Court.

The Disciplinary Panel may provide for such notice to the attorney of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the attorney if the attorney is without representation.

(c) CLAIM OF DISABILITY DURING DISCIPLINARY PROCEEDINGS.

If during the course of a disciplinary proceeding the attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness or because of the use of drugs or intoxicants which makes it impossible for the attorney to defend adequately, the Disciplinary Panel shall enter an order immediately suspending the attorney from continuing to practice law until a determination is made of the attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of paragraph (b) above.

(d) APPLICATION FOR REINSTATEMENT.

Any attorney suspended under this Rule for incompetency, mental illness, physical infirmity or because of the use of drugs or intoxicants may apply to the Disciplinary Panel for reinstatement immediately and thereafter once a year or at such shorter intervals as the Disciplinary Panel may direct in the order of suspension. The application shall be granted by the Disciplinary Panel upon a showing by clear and convincing evidence that the attorney's disability has been removed and that the attorney is fit to resume the practice of law provided, however, that if the suspension was based on resignation from the bar of another court the attorney must provide proof that the attorney has been reinstated in the other court, or that, if the suspension from practice before this Court was based on a finding of incompetence or incapacity by

another court, it clearly appears on the face of the record that any of the five elements set forth in LCvR 83.16(c)(4) exist. The Disciplinary Panel may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney. The Disciplinary Panel may direct that the expenses of such an examination shall be paid for by the attorney.

If an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the Disciplinary Panel may dispense with further evidence and direct the reinstatement of the attorney upon such terms as it deems proper and advisable.

(e) EVIDENTIARY HEARING.

If the Disciplinary Panel holds an evidentiary hearing to determine whether an attorney is incapacitated or on an attorney's application for reinstatement under this Rule, the Chairman of the Committee shall appoint one or more members of the Committee to appear for the purpose of examining and cross-examining witnesses and/or offering proof or argument pertinent to the issues.

(f) WAIVER OF PHYSICIAN-PATIENT PRIVILEGE.

The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any physical patient privilege with respect to any treatment of the attorney during the period of the attorney's disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since the attorney's suspension and the attorney shall furnish the Disciplinary Panel with written consents for such psychiatrists, psychologists, physicians or hospital to disclose such information or records as may be requested by the medical experts designated by the Disciplinary Panel.

COMMENT TO LCvR 83.19: *Section (a) is modified to cover attorneys who have resigned from the bar of any court or been suspended from any bar on the basis of mental incompetence, or incapacity, or on the basis of physical infirmity or illness. Section (d) is modified to provide that application for reinstatement following suspension based on resignation from the bar of another court will require proof of reinstatement in the other court.*

LCvR 83.20

COUNSELING

(a) REFERRAL OF ATTORNEYS FOR COUNSELING.

Judges may refer to the counseling panel established by this rule any member of the bar of this Court who exhibits a deficiency in performance and who, in the judge's opinion, would likely benefit from counseling by other trial attorneys on matters of litigation practice, ethics, or apparent abuse of alcohol or drugs. The judge will notify the panel of the referral and the basis therefor, and may also notify the attorney. The referral shall be confidential.

(b) THE COUNSELING PANEL.

The counseling panel shall be composed of experienced litigation practitioners appointed by the Court, one of whose members shall be designated chairperson.

(c) PANEL PROCEEDINGS.

The chairperson of the counseling panel shall receive references from judges and assign the referred member to a particular panel member for counseling. Participation in the counseling program by referred attorneys shall be voluntary. Any conversations between the referred attorney and members of the panel shall be confidential and shall not waive any attorney client privilege. The panel will make no findings or report of its action as to any referred attorney, other than a report to the referring judge as to whether the attorney did or did not participate in counseling.

(d) CONFIDENTIALITY AND IMMUNITY.

All documents and communications relating or referring to the Panel's referrals shall remain confidential and privileged.

All meetings and discussions of the Counseling Panel shall be held *in camera* and the business conducted therein shall remain confidential and privileged. All records, reports, correspondence and minutes of the Panel shall be maintained by the Chairperson of the Counseling Panel and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power relegated by the court, panel members shall be absolutely immune from suit for any conduct in connection with their duties. Referrals and counseling with respect thereto shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

LCvR 83.21

PUBLICATION OF AMENDMENTS

Any amendment to these rules shall be published in The Daily Washington Law Reporter before its adoption. The notice shall state that the proposed amendment will be adopted unless modified or withdrawn after receiving comments from organized bar associations, members of the bar, and the public. Such comments shall be submitted in writing within 45 days of publication to the Chairman of the Advisory Committee on District Court Rules. If the court determines there is an immediate need for a particular local rule or amendment to an existing local rule, it may proceed without public notice and opportunity for comment, but the court shall promptly thereafter afford such notice and opportunity for comment.

COMMENT TO LCvR 83.21 AS AMENDED 10/10/90: *This amendment brings the rule in compliance with 28 U.S.C. §2071(e) which permits the court to dispense with notice and comment if the court "determines that there is an immediate need for a [local] rule" and if the court "promptly thereafter afford[s] such notice and opportunity for comment."*

LCvR 83.22

PUBLICATION AND PROOF THEREOF

A notice relating to a proceeding that requires publication shall be published in the Daily Washington Law Reporter for the time fixed by statute or directed by the court, in addition to any newspaper or periodical specifically designated by the court. Publication shall be proved by affidavit of an officer or agent of the publisher, stating the dates of publication with an attached copy of the notice as published.

LCvR 83.23

DISMISSAL FOR FAILURE TO PROSECUTE

A dismissal for failure to prosecute may be ordered by the court upon motion by an adverse party, or upon the court's own motion. An order dismissing a claim for failure to prosecute shall specify that the dismissal is without prejudice, unless the court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party.

APPENDIX A

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

ORDER

The Court, meeting in Executive Session on October 13, 1993, considered the Final Report and Recommendations of the Civil Justice Reform Act Advisory Group for the United States District Court for the District of Columbia. Following discussion and modification, the attached CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN is ADOPTED on November 30, 1993.

It is hereby ORDERED by the Court that the Plan shall be considered effective as of March 1, 1994 and shall apply to all civil cases filed on or after March 1, 1994, and may, at the discretion of the individual judicial officer, apply to civil cases then pending.

It is FURTHER ORDERED that the Plan shall be incorporated into the Local Rules of the Court through the rule revision process. Until the Plan is adopted by Local Rule, this Order shall serve as authorization that the Plan will be treated as an amendment to the Local Rules of this Court.

DATED this 30th day of November, 1993.

FOR THE COURT:
/s/ JOHN GARRETT PENN
Chief Judge

PART I: REQUIREMENTS OF THE ACT

The United States District Court for the District of Columbia adopts the following Civil Justice Expense and Delay Reduction Plan as required by 28 U.S.C. § 471 and directs that it be implemented on December 1, 1993 (Sec. 103(b), Pub.L. 101-650).[1] The Plan will become effective by Executive Order on March 1, 1994. The Plan will be incorporated in the Local Rules of the Court through the rule revision process.

Pursuant to 28 U.S.C. §§ 472(a) and 478, the Court has had the benefit of a detailed report prepared by an Advisory Group appointed by former Chief Judge Aubrey E. Robinson, Jr., in March 1991 after consultation with the other judges of the Court. The Court has been mindful of its obligation to undertake an independent review and

assessment of the Advisory Group's recommendations, and it has done so (28 U.S.C. §§ 472(a) and 473(b)(6)). Nevertheless in formulating this Plan, the Court has relied extensively on the work of the Advisory Group and its Final Report.

The Civil Justice Reform Act of 1990 sets forth in great detail "principles and guidelines of litigation management and cost and delay reduction" (28 U.S.C. § 473(a)) and requires that every district court consider these principles and guidelines in the development of its plan. The six principles and guidelines are: (1) systematic, differential treatment of civil cases; (2) early ongoing judicial control of the trial process; (3) discovery and case management conferences; (4) encouragement of voluntary exchange of information among litigants and other cooperative discovery devices; (5) prohibition of discovery motions absent a certification of a good faith effort to reach agreement with opposing counsel; and (6) authorization to refer cases to alternative dispute resolution (ADR) programs. As is clear from the Final Report prepared by the Advisory Group and the Court's Plan (Parts II and III), each of these principles has been carefully considered and applied to the realities of this district.

The Act also includes a number of litigation management techniques that district courts "shall consider and may include" in their plan (28 U.S.C. § 473(b)). The cost and delay reduction techniques are: (1) a requirement of a joint discovery-case management plan; (2) a requirement that counsel with authority to bind be present at the pretrial conference; (3) a requirement that clients as well as their lawyers sign requests for extension of discovery deadlines or postponement of the trial date; (4) the availability of referral to a neutral evaluation program early in the litigation; and (5) a requirement that representatives of the parties with authority to bind be present or available by telephone during any settlement conference. Each has been considered by the Advisory Group and the Court. Adoption of all of them in whole or in part as well as the rejection of one of them can be seen in the Court's Plan.

Pursuant to 28 U.S.C. § 474(b)(2), the Court's Plan "adequately responds to the conditions relevant to the civil and criminal dockets of the court." While the Advisory Group's Final Report does include several chapters discussing the docket, the recommendations really describe what the Court should do in response to the problems identified by the Advisory Group. As such, the Court has addressed the Group's concerns with the docket by adopting many of its recommendations in this Plan.

PART II: THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

As required by the Act at 28 U.S.C. §§ 472(a) and 473(b)(6), the Court has considered all of the Advisory Group's 49 recommendations. Based on the Advisory Group's Final Report, the Court adopts the following recommendations as the content

of its Civil Justice Expense and Delay Reduction Plan. This Plan will apply to all civil cases filed on or after March 1, 1994, and may, at the discretion of the individual judicial officer, apply to cases then pending. The Plan will be incorporated into the Local Rules of the United States District Court for the District of Columbia through the rule revision process.

SECTION 1: PRELIMINARY PRETRIAL PROCEDURES

When a complaint is filed, the Clerk will mail to the party or counsel filing the complaint (1) a description of the Court's Alternative Dispute Resolution (ADR) Program, (2) a list of the items on which the parties must confer before the scheduling conference with the Court, and (3) a notice that the action will be dismissed against a defendant unless proof of service of process is filed as to that defendant within 125 days of the date of the filing of the complaint. Items (1) and (2) will also be sent when an answer or any motion is filed by a party or counsel. The Clerk will automatically issue an order dismissing without prejudice any complaint against a defendant for which a return of service has not been filed as to that defendant within 125 days of the filing of that complaint, unless otherwise expressly directed by the judge to whom the case has been assigned.

SECTION 2: CASE TRACKING

The Court adopts in principle the concept of case tracking. The Court adopts a three track differentiated case management system. The Fast Track will include all cases that can be disposed of promptly. The Routine or Standard Track will include cases that are relatively routine. The Complex Track will include complex cases. There would be presumed limits on the number of interrogatories and depositions.

The determination of which track a case would be assigned would rest initially with counsel who would discuss track assignment during the meet-and-confer conference. The Court, however, will make the final decision on track assignments and limits on the number of interrogatories and depositions. The judge can change track assignments at anytime.

SECTION 3: MEET-AND-CONFER CONFERENCES

In cases involving only one defendant, counsel (including any nonprisoner *pro se* party) will meet in person or, if the parties consent, by telephone to discuss the case in preparation for the initial scheduling conference with the Court within 15 days of the appearance or first filing in the form of an answer

or any motion by that defendant. In any case involving multiple defendants, including the United States or any other defendant who is given more than 20 days to answer the complaint, the 15-day period will begin with the appearance or first filing in the form of an answer or any motion by the party that is given the longest time to answer under the Federal Rules of Civil Procedure.

In any case in which some but not all defendants have been served or in which some defendants with longer periods to answer have not appeared, the plaintiff or any defendant may file a motion with the Court requesting that the meet-and-confer requirement be suspended until such time as the Court shall fix in light of the fact that some defendants have not yet entered or appeared in the case.

The meet-and-confer requirement will not apply in any prisoner *pro se* case or in any nonprisoner *pro se* case in which a dispositive motion is filed before the time to meet and confer expires.

The following matters will be discussed at the meet-and-confer conference:

1. The case tracking category in which the case should be placed, whether the case is likely to be disposed of by dispositive motion, and whether, if a dispositive motion has already been filed, the parties should recommend to the Court that discovery or other matters should await a decision on the motion.

2. The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.

3. Whether the case can be assigned to a magistrate judge for all purposes, including trial.

4. Whether there is a realistic possibility of settling the case.

5. Whether the case could benefit from the Court's alternative dispute resolution (ADR) procedures or some other form of alternative dispute resolution and, if so, which procedure should be used, and should discovery be stayed or limited pending completion of ADR.

6. Whether the case can be resolved on summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

7. Whether the parties can agree on the exchange of certain core information (e.g., names and addresses of witnesses, relevant documents, computations of damages, the existence and amount of insurance) without formal discovery, the extent of any discovery, how long discovery should take, whether there should be a limit on discovery (e.g., number of interrogatories, number of depositions, time limits on depositions), whether a protective order is appropriate, and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

8. Dates for the exchange of expert witness information pursuant to Fed.R.Civ.P. 26(b)(4), and for taking depositions of experts (within the discovery cut-off period) where necessary.

9. In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or evidentiary hearing on the motion and a proposed date for decision.

10. Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

11. The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).

12. Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

No later than 10 days following this meeting, counsel for the parties must file with the Court a succinct statement of the following matters:

1. Any agreements the parties have reached at their meeting with respect to any of the 12 specific matters set forth above.

2. The parties' position on any of the 12 specific matters set forth above as to which they disagree. Counsel must file a joint submission, even if the submission sets forth differing views. Counsel's filing of a statement will constitute certification that counsel has discussed with the client the 12 matters set forth above, including the possibility of settlement and the availability and range of ADR options.

SECTION 4: SCHEDULING CONFERENCE

After conferring with the parties at the first scheduling conference, the judge will place a case in the category in which it best fits, determine whether specified limits should be placed upon discovery, and issue a scheduling order.

The Court will determine which categories of cases will be exempt from the scheduling conference requirement.

SECTION 5: PRETRIAL CONFERENCE

The Court will seek to ensure that the period of time between the pretrial conference and commencement of the trial is no more than 30 to 60 days.

SECTION 6: MOTIONS AND HEARINGS; FINDINGS IN BENCH TRIALS

A. The trial judge will carefully consider which *in limine* motions, if decided prior to trial, might warrant the granting of a motion for summary judgment or lead to settlement and endeavor to resolve those motions prior to trial. The trial judge will also carefully consider whether other *in limine* motions might become moot if a case settles or as the issues unfold at trial or might more easily be resolved either immediately before the trial begins or during the trial.

B. Each judge will establish as his or her policy that all motions will be heard and decided promptly and that findings of fact and conclusions of law will be promptly rendered in nonjury cases. The Court will endeavor to issue bench opinions where appropriate.

As to specific deadlines for deciding matters, the Court is required already under the Act to file reports on all motions pending over six months and all bench trials submitted more than six months as well as all civil cases pending more than three years. The Court believes that these time frames are sufficient.

C. Each judge will require that all dispositive motions be filed sufficiently in advance of the pretrial conference so that they can be ruled on before the conference and the parties can avoid unnecessary preparations for a conference and/or a trial if such motions are granted.

D. Each judge will require counsel for the party planning to make a nondispositive motion to discuss the motion either in person or by telephone with opposing counsel in a good-faith effort to determine whether there is any opposition to the motion and to narrow the areas of disagreement if there is opposition. A party will be required to include in its motion a statement that the required discussion occurred, state whether the motion is opposed or not, and describe briefly whether that discussion did in fact reduce the area of disagreement and how it was reduced.

SECTION 7: DISCOVERY

A. The Court adopts the principle that there should be numerical limits on interrogatories and depositions. Counsel and parties, through their involvement in the meet-and-confer conference, will discuss discovery limits. The trial judge will determine, based on the results of the meet-and-confer conference and the characteristics of the case, the specific limits on the number of interrogatories and depositions.

B. At the discretion of the district judge, discovery and pretrial matters should be referred to magistrate judges.

C. The Court's Committee on Local Rules will review the problem of deposition and discovery misconduct and ask the District of Columbia Bar to study the problem and assist in promoting appropriate deposition and discovery conduct.

D. At the discretion of the district judges and magistrate judges, discovery disputes will be resolved by telephone conference, short informal written submissions, formal submissions, or briefing and oral argument. Judges will endeavor to decide routine discovery motions from the bench, in a telephone conference with counsel, or within 7 days of submission or of the hearing.

SECTION 8: MAGISTRATE JUDGES

A. The Court will seek to educate the Bar on the possibility of proceeding before a magistrate judge for all purposes in civil cases and will invite the Bar to provide feedback on its experiences before magistrate judges.

B. Magistrate judges will retain primary responsibility for considering petitions by adopted persons to open adoption records of the Court pursuant to Rule 501.

C. The Court will invite magistrate judges to attend certain meetings of the Executive Session.

SECTION 9: SPECIAL MASTERS

A. Under the appropriate supervision from the Court, special masters will be used in all cases where suitable.

B. The Clerk of Court will maintain a list of special masters with experience in this Court and in other courts as a reference source. The Clerk will advertise the fact that the Clerk's Office will maintain a file of resumes of all people who wish to offer their services as a special master. All resumes submitted will be kept in alphabetical order and will be available to the Court and the public. The Clerk will not make any determinations about the qualifications of any person who has submitted a resume. The file will serve as a reference source only. The Office of Dispute Resolution will inform all of its neutrals of the Clerk's Office file of special master candidates. The Office of Dispute Resolution will provide additional information about neutrals to any judge only if such information is requested by a judge. The Clerk will update the list and advertise the existence of the special master file every two years.

SECTION 10: TRIAL PROCEDURES

A. Each judge will try to schedule a trial, in either a civil or a criminal case, so that the evidence will not be interrupted by other proceedings. The Court agrees in principle in holding uninterrupted proceedings, but notes that exceptions (e.g., emergency Temporary Restraining Orders (TROs) and other matters that will be left to the discretion of the judge) may exist.

B. Each judge will try to hold trials during "normal business hours." Judges will consider the needs of court personnel, witnesses, and jurors when scheduling trials. Exceptions to this general principle may exist and will be determined at the discretion of the trial judge.

C. Each judge will set strict timetables for the submission of proposed findings of fact and conclusions of law in nonjury trials and proposed jury instructions for jury trials.

SECTION 11: ALTERNATIVE DISPUTE RESOLUTION (ADR)

A. When using ADR, the parties should have three options for choosing an ADR specialist: (1) a qualified volunteer from the Court's roster or a staff mediator, (2) a magistrate judge, or (3) a person agreed upon and paid by the parties. If the parties cannot agree, the Court will select a qualified volunteer or staff mediator.

B. The Court will require that all attorneys certify that they are familiar with the ADR processes that are available.

C. The Court will require, whenever possible, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement negotiations and ADR proceedings.

SECTION 12: *PRO SE* CASES

A. For *pro se* prisoner cases involving the District of Columbia Department of Corrections, unless there is a need for immediate judicial intervention or the prisoner has already exhausted the remedies offered by the grievance process or the judge determines that there is no reasonable possibility that the grievance process will resolve the complaint, judges will grant a 90-day stay to permit the grievance process certified by the Department of Justice to run its course. The Court will monitor the effectiveness of the grievance process to ensure that the stays actually contribute to reducing cost and delay.

B. Judges will decide as soon as possible after a case is assigned to them whether appointment of counsel is appropriate and, if so, will appoint counsel as early as possible.

SECTION 13: SPACE AND FACILITIES

The Court will seek sufficient space to provide adequate chambers and an adequate courtroom for every active judge, every senior judge, every magistrate judge, and the bankruptcy judge.

SECTION 14: IMPACT ON LOCAL RULES

The Court's Committee on Local Rules will review this Plan and will make recommendations as to any local rule change as necessary, including determining presumptive limits on the number of interrogatories and depositions for each track.

PART III: PRINCIPLES AND TECHNIQUES CONSIDERED BUT NOT ADOPTED

As required by the Act at 28 U.S.C. § 473(b), the Court has considered the following case management techniques and recommendations but did not adopt them:

1. A requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request. (28 U.S.C. § 473(b)(3))

   The Court notes that such a requirement is less meaningful in this Court where 48% of all civil cases involve the United States or the District of Columbia.

2. Recommendation that judges schedule, hear, or decide various matters within prescribed time limits arbitrarily set by the Advisory Group in its Final Report. (Recommendations 5, 7, 12, 13, and 14)

   The Court notes that while each judge does his or her best to keep the docket moving, each is operating with an unpredictable criminal and civil caseload. This Court has been handling a full docket for the past year with five judicial vacancies, yet it is still able to dispose of civil cases within the median time of nine months. Any recommendations for when matters should be decided should be addressed not by reducing judicial discretion, but by encouraging judges to manage their calendar in the most effective manner possible as determined by each judge in each case and consistent with the CJRA Plan that has been adopted and as may be amended.

3. Recommendations that the Court establish various pilot programs to experiment with greater involvement of magistrate judges in civil cases, a back-up role of senior judges, use of jury questionnaires, and greater use of the Court's ADR program. (Recommendations 18, 21, 23, 34, and 35)

The Court notes that each judge already has the discretion to refer matters to magistrate judges and the ADR program, and use jury questionnaires. Senior judges are presently coordinating with the Calendar Committee and are serving in an informal back-up role to support the active judges.

4. Recommendations that the Court hire additional staff. (Recommendations 24 and 40)

   While additional staff is needed, the Court cannot hire additional personnel because of a lack of available funds.

5. Recommendations concerning judicial vacancies, statistics, sentencing guidelines, mandatory minimum sentences, and additional resources for the Clerk's Office. (Recommendations 42, 43, 44, 45, 46, and 47)

   The Court determined that no action was required as these recommendations are directed to the Executive, the Congress, the United States Sentencing Commission, and the Administrative Office of the United States Courts.

PART IV: CONCLUSION

The Court recognizes that facilitating access to justice and ensuring just, speedy, and inexpensive resolutions of civil disputes is an ongoing process. As required by 28 U.S.C. § 475, the Court will assess annually the condition of the Court's civil and criminal dockets with a view to determining what additional steps could be taken to reduce cost and delay and improve litigation management techniques practiced by the Court.

This Plan was approved and adopted by the Board of Judges of the United States District Court for the District of Columbia.

November 30, 1993
Date

/s/ JOHN GARRETT PENN
Chief Judge

APPENDIX B

DISPUTE RESOLUTION PROGRAMS

"THE DISTRICT COURT IS COMMITTED TO MAKING DISPUTE RESOLUTION AN EFFECTIVE AND INTEGRAL PART OF THE ADMINISTRATION OF JUSTICE IN THIS JURISDICTION..."

Norma Holloway Johnson
Chief Judge

INTRODUCTION

This introduction is provided to litigants and attorneys as an overview of the Mediation Program of the United States District Court for the District of Columbia. The Mediation Program was created in 1989 to give litigants an opportunity to discuss -- with a trained, neutral third person -- the possibility of settling their dispute consensually, without trying the case in court. Mediation, while not appropriate in all cases can offer numerous advantages over both formal litigation and direct negotiations in many situations. Mediation may, for example, lead to resolutions that are:

faster
less expensive
more creative
better able to address the underlying interests of all parties

This introduction has a two-fold purpose: (1) to explain mediation to litigants and their counsel; and (2) to help counsel meet their obligations under Local Rule 16.3 to "meet and confer" early in the litigation process about whether mediation would be appropriate in particular cases.

WHAT IS MEDIATION?

Mediation is an informal process in which a specially-trained neutral third person helps the parties in a lawsuit attempt to reach a mutually agreeable settlement. The mediation process involves one or more sessions in which counsel, litigants and the mediator participate and may continue over a period of time. *The mediator has no power to render a decision or dictate a settlement.* She or he can, however, help the parties improve communication, clarify interests and probe the strengths and weaknesses of their own and their opponents' positions. The mediator can also identify areas of agreement and help generate options that lead to a settlement.

HOW DOES A CASE GET INTO THE MEDIATION PROGRAM?

Voluntary participation. Participation in the District Court's Mediation Program is voluntary. Parties may request mediation or the presiding judge may suggest it at a status conference. If all parties consent, the judge issues an order referring the case to the Office of the Circuit Executive, where the program is administered. The referral may take place at any time while the case is pending.

Local Rule 16.3 Local Rule 16.3 requires counsel to meet, within 15 days after the defendant enters an appearance in a case to discuss -- among other things -- whether mediation might be appropriate. In assessing the possibility of mediation, counsel must consider:

their clients' goals and objectives;
the status of any prior settlement talks;
the potential timing of any referral to mediation;
whether their clients might benefit from a neutral evaluation of the merits of the case; and
whether mediation might result in cost savings or any other practical benefits.

Within 10 days following this meeting, the parties must submit a joint report to the Court describing their views on the application of mediation to their case and outlining the steps that might be taken to facilitate that process. The report must also tell the Court whether counsel discussed mediation with their clients before filing the report.

Thus, even if the presiding judge does not suggest that counsel consider mediation, Rule 16.3 requires them to do so.

WHICH CASES ARE ELIGIBLE FOR MEDIATION?

All civil cases in which parties are represented by counsel are eligible for mediation. Each case should be assessed on an individual basis to determine whether a referral would be appropriate.

WHAT MAKES A PARTICULAR CASE APPROPRIATE FOR MEDIATION?

Deciding whether a particular case has "mediation potential" is an art, not a science. Thinking about the factors listed below should help you make that determination.

Relationship between the parties. Do the parties in your case have a business or other ongoing relationship? If so, is this an incentive to try to resolve the problems

that generate the lawsuit? Are emotions so high that the intervention of a third person might help the parties communicate?

***Receptivity of the lawyers*.** Are the lawyers in the case receptive to the mediation process?

Reluctance to exchange information in direct negotiation. Can a mediator help the parties identify and exchange information that will enable them to begin serious settlement discussions?

Adequacy of a judicial remedy. Will a judicial ruling give the parties what they really want and need? In certain kinds of lawsuits, for example, the plaintiff may want an apology in addition to money damages. Courts generally do not order litigants to apologize. But some form of apology might be available through a mediation.

Divergent views about the value of a case. Do the parties have widely divergent views about the *value* of a case; that is, about what will happen if the case goes to trial? Would they benefit from a neutral evaluation of their case by a Court mediator who is an expert in this type of litigation?

Need for a precedent. Do one or more of the parties seek to establish a legal precedent and therefore require a judicial ruling? Government or institutional litigants may frequently be in this position. In such a case, mediation might *not* be appropriate.

Need for privacy. Do the parties want to avoid a public airing of their dispute? A case involving the break-up of a law firm or claims of sexual harassment might be examples.

Difficulty in fashioning a remedy. Has liability been established, leaving the Court with the sometimes more difficult problem of fashioning a remedy? Could a mediator help the parties in this task? Class-action employment discrimination cases often present this problem. In such cases the Court may have decided that the institution's past practices are unlawful but left it to the parties to craft injunctive relief for the future.

Need for mediation to resolve continuing disputes. Can a mediator help the parties agree upon a dispute resolution mechanism they can use *after* the lawsuit is settled to resolve disputes that flow from the lawsuit? For example, can a mediator help litigants in a class-action discrimination case devise a mechanism to be used to decide the monetary value of each class member's claims, once class-wide liability is established?

WHEN SHOULD MEDIATION OCCUR?

Cases can be referred to mediation at any point during the litigation process. There are no hard-and-fast rules about when intervention might be most useful. As with case selection, the best way to think about the *timing* of a referral is to consider a series of questions:

> Do the parties have *enough information* to engage in serious conversations about settlement?
>
> Are there *outstanding legal issues* that the Court must resolve before settlement talks can take place?
>
> Have *the parties' circumstances changed* in a way that would make settlement talks more productive than in the past?
>
> Has the *imminence of trial*, with its attendant costs, anxieties and potential for publicity, heightened the parties' interest in settlement?
>
> Has liability been decided? Could a mediator assist the parties in *devising a proposal for injunctive relief?*

Your answers to these questions should help you confirm whether mediation is appropriate and, if so, when it should take place.

WHO ARE THE MEDIATORS?

The mediators are members of the United States District Court Bar who are selected by the Court and trained by professional trainers to provide mediation services to litigants on a *pro bono* basis. The Court typically maintains a roster of approximately 150 mediators.

HOW IS A MEDIATOR ASSIGNED TO A CASE?

When a case enters the program, a member of the dispute resolution staff in the Circuit Executive's Office appoints a qualified mediator from the Court's roster. The staff welcome any suggestions or ideas counsel may have about the *type* of mediator who is likely to be most helpful.

Mediators with particular expertise in the subject-matter of the lawsuit are available if the judge and the parties believe a neutral evaluation of the case is needed. In such a case the mediator would not only assist the parties in identifying their interests and the options for settlement, she or he would also give them an informal, non-binding

assessment of the merits of the action. That assessment may be given to each side privately or to all parties in a joint mediation session.

WHAT TAKES PLACE IN A MEDIATION?

A mediation typically begins with a joint meeting of all parties and their counsel and the mediator, held within three weeks of the mediator's appointment. During that session, each participant has the opportunity to voice his or her perception of the dispute and to ask questions. The mediator then meets with each party separately to explore the issues further and to suggest settlement options. Mediation may continue over a period of time, with additional joint or individual sessions. The mediator may also confer with the parties by telephone. The process ends when one of the following events occurs:

the parties settle their dispute

the mediator and the parties conclude that further discussions would be fruitless; or

the *mediation deadline* -- a date that is established by the judge's order of referral -- is reached.

KEY POINTS ABOUT THE MEDIATION PROCESS

Mediation in the U.S. District Court is based on the following principles:

All mediation proceedings are *confidential.* Documents generated for the mediation are also confidential and may not be introduced during a subsequent trial should the case not settle. The judge who is assigned to the case is not told the identity of the mediator or given any information about the transpires during the mediation process.

Counsel and parties *with settlement authority* must attend mediation sessions. Certain exceptions may be granted for institutional parties or if a party is a unit of government.

At least seven days prior to the first mediation session, each party must give the mediator a mediation statement that outlines the key facts and legal issues in the case. *Mediation statements are not briefs and are not filed with the Court.*

Unless the presiding judge indicates otherwise, referral of a case to mediation *does not stay* other proceedings in the case or alter applicable litigation deadlines.

The parties may seek an extension of the Court-imposed *mediation deadline* by filing an appropriate motion. The motion may represent the mediator's views about whether an extension is advisable, but may not disclose the mediator's identity.

The Office of the Circuit Executive monitors the progress of mediated cases on a confidential basis. *Questions or problems* arising during the course of a mediation may be brought to the attention of the dispute resolution staff by any party.

COMPLIANCE JUDGE

Information about the mediation is confidential and may not be disclosed to the presiding judge in any referred action. To protect confidentiality while at the same time preserving the Court's ability to ensure compliance with its dispute resolution policies and orders, the Court has designated one judge to serve as the Dispute Resolution Compliance Judge. Complaints that litigants have not complied in good faith with the Court's mediation guidelines or with a judicial order referring a case to the program must be brought to the attention of the Director of Dispute Resolution, who may then refer them to the Compliance Judge for appropriate action. *Litigants may not bring such matters to the attention of the Compliance Judge directly or to the attention of the judge who is presiding in the lawsuit.*

PROGRAM ADMINISTRATION

The District Court's Mediation Program as well as the Appellate Mediation Program in the United States Court of Appeals for the District of Columbia Circuit are administered by the Office of the Circuit Executive. The Office is responsible for assigning cases to qualified neutrals and providing parties with the proper notification and instructions. Attorneys in the Circuit Executive's Office also monitor the progress of cases, collect pertinent statistical information and serve as a resource for program mediators as they handle cases.

WHERE CAN I GET MORE INFORMATION?

CLERK'S OFFICE

The District Court Clerk's Office supplies copies of:

The *Rules of the United States District Court for the District of Columbia,* including Local Rule 16.3 and the Court's mediation procedure.

Mediation in the United States District Court for the District of Columbia

OFFICE OF THE CIRCUIT EXECUTIVE

For information about using the Court's Mediation Program or about the procedures that apply once a case is referred, or for other information about dispute resolution, contact:

Director of Dispute Resolution
Office of the Circuit Executive
United States Courts for the
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 216-7350

APPENDIX C

PROGRAM PROCEDURES FOR MEDIATION IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA CIRCUIT

I. THE MEDIATION PROCESS

Mediation is a process in which parties and counsel meet with a neutral trained to assist them in settling disputes. The neutral, a mediator, meets initially with all parties to the dispute and their counsel in a joint session. At this meeting, the mediator explains the mediation process and gives each party an opportunity to explain his or her views about the matters in dispute. There is then likely to be discussion and questioning among the parties as well as between the mediator and the parties.

At the conclusion of the joint session, the mediator will typically caucus individually with each party. Caucuses permit the mediator and the parties to explore more fully the needs and interests underlying the stated positions. In caucuses the mediator also helps the parties begin thinking about settlement options. He or she encourages an expansive view of both the matters in dispute and the possibilities for settlement. In some cases the mediator may offer specific suggestions for settlement; in other cases the mediator may help the parties generate creative settlement proposals. In all cases, mediation provides an opportunity to explore a wide range of potential solutions and to address interests that may be outside the scope of the stated controversy or which could not be addressed by judicial action. Mediation also allows the parties to participate in crafting a resolution of the dispute.

The mediator may conduct additional joint sessions to promote further direct discussion between the parties, or she/he may continue to work with the parties in private caucuses. The mediation concludes when the parties reach a mutually acceptable resolution, when the parties fail to reach an agreement, or on the date the judge specified as the mediation deadline.

The mediator has no power to impose a settlement and the mediation process, whether or not settlement is reached, is confidential.

II. MEDIATION PROCEDURES

A. Judges may designate civil cases for mediation, subject to the availability of qualified mediators, by (1) encouraging parties to submit to mediation voluntarily and preparing a consent order to that effect, or (2) requiring parties to participate after giving them an opportunity, in response to a show cause order, to explain why mediation would not be appropriate in their case.

B. When a case is designated for mediation, the Circuit Executive will appoint a mediator to handle it. The mediator will contact all attorneys to fix the date and place of the first mediation session, which will be held within three weeks of the date the mediator was appointed.

C. The Circuit Executive will provide counsel with copies of the judge's designation order, the Circuit Executive's notice of appointment of mediator and a copy of program procedures.

D. No later than seven days prior to the first mediation session, each party shall submit directly to the mediator and to all other parties a position paper not to exceed ten pages, outlining the key facts and legal issues in the case. The paper will also include a description of motions filed and their status.

Position papers are not briefs and are not filed with the Court.

E. The mediator may hold mediation sessions in his/her office or at the Court.

F. The mediator will schedule additional mediation sessions, as needed.

G. If settlement is reached, in whole or in part, the agreement, which shall be binding upon all parties, will be put into writing, and counsel will file a stipulation of dismissal. If the case does not settle, the mediator will immediately notify the Circuit Executive's office, and the case or the portion of the case that has not settled will continue in the litigation process.

H. Regardless of the outcome of a case, mediators will complete a case evaluation form for each case mediated.

I. Mediators, and any party who has first discussed a problem with the mediator without obtaining a satisfactory resolution of the matter, shall report to the D.C. Circuit's Dispute Resolution Director any instances of noncompliance with mediation procedures that, in their view, may disrupt the mediation process or threaten the integrity of the mediation program. Such matters may, in the discretion of the Director, be reported to the ADR Compliance Judge for appropriate action.

III. ATTENDANCE AT MEDIATION SESSIONS

A. The Court requires counsel and all parties to attend mediation sessions. If a party is an institution, a representative of the institution, in addition to outside counsel, who has actual authority to approve a settlement agreement, must be present or must be immediately accessible by phone.

B. When a party is a unit of government, senior attorneys on either side may attend mediation sessions, but efforts must be made to ensure that someone with settlement authority can be reached during mediation sessions.

IV. CONFIDENTIALITY

A. Confidentiality will be ensured throughout the mediation process.

B. Mediators will guarantee the confidentiality of all information provided to, or discussed with, them. The Circuit Executive and Circuit Executive's staff, responsible for program administration, evaluation, and liaison between the mediators and the Court will maintain strict confidentiality.

C. No papers generated by the mediation process will be included in Court files, and information about what transpires during mediation sessions will not at any time be made known to the Court.

CRIMINAL

LCrR 1.1

SCOPE AND CONSTRUCTION

These rules govern all proceedings in the United States District Court for the District of Columbia. These rules supplement the Federal Rules of Civil and Criminal Procedure and shall be construed in harmony therewith.

LCrR 6.1

GRAND JURY MATTERS

A motion or application filed in connection with a grand jury subpoena or other matter occurring before a grand jury, all other papers filed in support of or in opposition to such a motion or application, and all orders entered by the court in connection therewith, shall be filed under seal. Such a motion or application shall be assigned a Miscellaneous case number. All hearings on matters affecting a grand jury proceeding shall be closed, except for contempt proceedings in which the alleged contemnor requests a public hearing. Papers, orders and transcripts of hearings subject to this rule, or portions thereof, may be made public by the court on its own motion or on motion of any person upon a finding that continued secrecy is not necessary to prevent disclosure of matters occurring before the grand jury.

COMMENT TO LCrR 6.1: *This is a new rule, implementing Rule 6(e) (5) and (6), Federal Rules of Criminal Procedure, which were added in 1983. The proposed rule reflects current practice. While Rule 6(e) (5) of the Federal Rules does not take a position on whether an alleged contemnor is entitled to a public hearing, the Advisory Committee Notes recognize that such a right clearly exists in criminal contempt proceedings. This proposed rule would clearly establish a right to an open hearing upon request in civil and criminal contempt proceedings.*

LCrR 16.1

DISCOVERY

Defense counsel shall consult with the attorney for the United States prior to the first status conference in a criminal case and shall attempt to obtain voluntary discovery of all materials and information to which the defense may be entitled. No discovery

motion shall be heard unless it states that defense counsel has previously requested that the information sought from the attorney for the United States and that such attorney has not complied with the request.

LCrR 17.1

ISSUANCE OF SUBPOENAS FOR APPOINTED COUNSEL

Defense counsel appointed under the Criminal Justice Act and staff attorneys of the Public Defender Service may apply to the Clerk for witness subpoenas where the witness will be served within a 25 mile radius of the boundaries of this district. The Clerk shall issue such subpoenas signed and sealed and designated *in forma pauperis,* but otherwise in blank. By filling in such a subpoena, defense counsel certifies that in counsel's opinion, the presence of the witness is necessary to an adequate defense. No subpoena so issued in blank may be served at a place more than 25 miles from the district. Where a witness to be subpoenaed will be served at a place more than 25 miles from the district, an application for the issuance of a subpoena *in forma pauperis* shall be made to the court. The application may be made *ex parte.*

LCrR 17.2

CLOSURE OF PRETRIAL PROCEEDINGS

(a) GENERAL RULE.

Unless otherwise provided by law or by this rule, all criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open court and shall be available for attendance and observation by the public. This rule does not apply to bench conferences, conferences in chambers, and other matters normally handled *in camera.*

(b) MOTION FOR CLOSURE.

Upon motion made or agreed to by the defendant, the court may in the exercise of its discretion order a pretrial proceeding to be closed to the public in whole or in part, on the grounds:

(l) that there is a substantial probability that the dissemination of information disclosed at the proceeding would impair the defendant's right to a fair trial or another overriding public interest; and

(2) that no reasonable alternative to closure will adequately protect the defendant's right to a fair trial or another overriding public interest.

If the court enters such an order, it shall state the specific findings which require closure.

(c) OPPOSITION BY NON-PARTIES.

Any news organization or other interested person may be heard orally or in writing in opposition to a closure motion by a party. When any papers are filed by a non-party opposing closure, the matter shall be assigned a Miscellaneous docket number and shall be governed by LCrR 56.6 of these Rules. A non-party seeking to appeal from an order of closure shall be responsible for filing in the Miscellaneous proceeding the order from which the appeal is taken, and such other parts of the record of the criminal case as may be necessary to determination of the appeal.

COMMENT TO LCrR 17.2(b)(1) AND (b)(2) AS AMENDED 10/10/90: *In* Press Enterprise v. Superior Court, *478 U.S. 1 (1986), the Supreme Court held that closure of a part of a criminal proceeding requires a finding of a "substantial probability" of harm to an "overriding interest." The "reasonable likelihood" standard, incorporated in our Local Rule 307, was expressly disapproved by the Court in that case. The foregoing amendment brings the rule into accord with the Supreme Court's holding, and also makes clear that the interests sought to be protected by closure are not limited to the defendant's right to a fair trial.*

LCrR 24.1

JURY

SELECTION AND ASSIGNMENT.

Grand and petit jurors shall be selected at random in accordance with a plan adopted by the court and available from the Jury Office. Petit jurors shall be assigned to a single jury pool and reassigned for service upon the requisition of each trial judge.

LCrR 24.2

COMMUNICATION WITH A JUROR

(a) DURING TRIAL.

No party, attorney for a party, or person acting on behalf of a party or attorney, shall communicate directly or indirectly with a juror or an excused juror or a member of a juror's, or an excused juror's, family during the trial.

(b) AFTER TRIAL.

After a verdict is rendered or a mistrial is declared but before the jury is discharged, an attorney or party may request leave of court to speak with members of the jury after their discharge. Upon receiving such a request, the court shall inform the jury that no juror is required to speak to anyone but that a juror may do so if the juror wishes. If no request to speak with jurors is made before discharge of the jury, no party or attorney shall speak with a juror concerning the case except when permitted by the court for good cause shown in writing. The court may grant permission to speak with a juror upon such conditions as it deems appropriate, including but not limited to a requirement that the juror be examined only in the presence of the court.

COMMENT TO LCrR 24.2: *The new rule gives the court greater flexibility by stating that where the request to converse with jurors is made after their discharge, the court may impose such conditions as it deems appropriate.*

LCrR 32.1

PROBATION AND REVOCATION OF PROBATION

(a) ASSIGNMENT TO A PROBATION OFFICER.

Immediately following a sentence of probation or a split sentence, the defendant shall be assigned to a probation officer.

(b) CONDITIONS OF PROBATION.

The court shall impose such conditions of probation as are necessary to provide a benefit to the probationer and protection to the public and may modify or enlarge such conditions at any time prior to the expiration or termination of the sentence as deemed advisable. The probationer shall be

provided by the probation office with a written statement and an explanation of the conditions imposed. If the matter cannot be resolved by the probation office, the probationer may request clarification of any condition from the sentencing judge and may petition the sentencing judge for a modification of the conditions imposed.

(c) HEARING ON ALLEGED VIOLATIONS OF PROBATION.

(l) Unless waived by the probationer after due notification of rights, a hearing shall be held on all alleged violations of probation where revocation is a possibility to determine whether a violation has occurred and, if so, the appropriate disposition. Prior to the hearing, the probationer shall be provided by the probation office with written notice of all alleged violations, and notice of the rights guaranteed by subsection (2), including the right to counsel and the right to appointed counsel if indigent.

(2) At the probation revocation hearing, which shall be held on the record in open court, the probationer shall be afforded:

(i) access to records regarding the probation violation;

(ii) the right to be represented by counsel, including the right to appointed counsel if indigent;

(iii) the right to subpoena and present witnesses and documentary evidence; and

(iv) the right to confront and cross-examine witnesses against the probationer.

(3) The government shall be represented by counsel at the probation revocation hearing.

(4) Before probation is revoked the court, in cases where the facts of violation are contested, shall make findings of fact and shall find that the government has established by a preponderance of evidence that the probationer has violated a condition of probation.

(d) VIOLATION OF A PROBATION CONDITION; RESENTENCING.

Upon finding a violation of a condition of probation the court may: continue the existing sentence with or without modification; enlarge the conditions of probation; revoke the probation and require the probationer to serve the

sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. In resentencing a probation violator the procedures governing initial sentencing decisions shall apply.

(e) HEARINGS DELEGATED TO THE MAGISTRATE JUDGE.

A hearing on an alleged violation of probation as provided in sub-section (c)(2) may be delegated by the court to the magistrate judge. Following a hearing before the magistrate judge, the magistrate judge shall file written findings and recommendations. The court shall make a *de novo* determination of those portions of the magistrate judge's report to which objections are made and may accept, reject, or modify in whole or in part, the findings and recommendations made by the magistrate judge. The court, however, need not conduct a new hearing and may make a determination based on the record developed before the magistrate judge. The court may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions. While the matter is pending before the magistrate judge, the magistrate judge shall have the authority to issue a bench warrant for the apprehension of the probationer for failure to appear before the magistrate judge as directed, or for failure to comply with any release conditions imposed by the magistrate judge.

LCrR 32.2

SENTENCING GUIDELINES

(a) Not less than 27 days prior to the date set for the sentencing, the probation officer shall disclose the initial presentence report to the defendant and the prosecution. Within 10 days thereafter, counsel shall communicate to the probation officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report. Such communication may be oral or written, but the probation officer may require that any oral objection be promptly confirmed in writing.

(b) After receiving counsels' objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(c) Not less than 7 days prior to the date of the sentencing, the probation officer shall submit the final presentence report to the sentencing judge. The report

shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved in the report, together with the officer's comments thereon. The probation officer shall certify that the contents of the final presentence report have been disclosed to the defendant and to counsel for the defendant and prosecution, that the addendum has been communicated to counsel, and the addendum fairly states any remaining objections.

(d) A hearing shall be held not more than 5 days prior to the date of sentencing to resolve any disputed issues of fact, and to gather any other information the court finds to be relevant to the sentencing guideline calculation. The court may consider any reliable information presented by the probation officer, the defendant, or the prosecution.

(e) When necessary to make consistent findings as to the role of each defendant in a multiple defendant case, the court may, in lieu of or in addition to the evidentiary hearing authorized for by subsection (d), convene a joint evidentiary hearing on the same or other appropriate date.

(f) To the extent that the final presentence investigation report is undisputed by the parties, it may be accepted by the court as accurate. The court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. The court shall ensure that the probation officer and the other party has ample notice of the objection and an opportunity fairly to rebut or support the assertion.

(g) Any of the time periods set forth in this rule may be modified by the court on its own motion, or at the request of a party or the probation officer for good cause shown, and the court may direct that the evidentiary hearing provided for in subsection (d) shall be held on the sentencing date. However, the 10-day period set forth in subsection (a) may be diminished only with the consent of the defendant.

(h) Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure.

(i) The presentence report shall be deemed to have been disclosed (l) when a copy of the report is physically delivered, (2) one day after the report's availability for inspection is orally communicated, or (3) three days after a copy of the report or notice of its availability is mailed.

LCrR 44.1

PRACTICE BY ATTORNEYS

(a) PRACTICE BY MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the bar of this Court may appear, file papers and practice in this Court, provided that the attorney complies with section (b) of this Rule.

(b) APPEARANCE AS SOLE OR LEAD COUNSEL IN A CONTESTED EVIDENTIARY HEARING OR TRIAL ON THE MERITS.

Each attorney who acts as sole or lead counsel in any contested evidentiary hearing or trial on the merits, civil or criminal, must have on file with the Clerk's office a certificate, in a form prescribed by the Clerk, that the attorney

(l) has previously acted as sole or lead counsel in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction in a contested jury or bench trial or other contested evidentiary hearing in which testimony was taken in open court and an order or other appealable judgment was entered; or

(2) has participated in a junior capacity in an entire contested jury or bench trial in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction; or

(3) has satisfactorily completed a continuing legal education trial advocacy course of at least 30 hours sponsored by the District of Columbia Bar or accredited by a State Bar.

(c) PRACTICE BY NON-MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any State, but who is not a member of the bar of this Court, may file papers in this Court only if such attorney joins of record a member in good standing of the bar of this Court. All papers submitted by non-members of the bar of this Court must be signed by such counsel and by a member of the bar of this Court joined in compliance with this Rule.

(d) PARTICIPATION BY NON-MEMBERS OF THIS COURT'S BAR IN COURT PROCEEDINGS.

An attorney who is not a member of the bar of this Court may be heard in open court only by permission of the judge to whom the case is assigned.

(e) ATTORNEYS EMPLOYED BY THE UNITED STATES.

An attorney who is employed or retained by the United States or one of its agencies may appear, file papers and practice in this Court in cases in which the United States or the agency is a party, irrespective of c and (d) above.

(f) ENTRY AND WITHDRAWAL OF APPEARANCE.

Attorneys may enter and withdraw appearances in civil actions as provided in LCvR 83.6 of these rules, and in criminal actions as provided in LCrR 44.5 of these Rules.

(g) STRIKING APPEARANCE FOR NONATTENDANCE AT COURT PROCEEDINGS.

The court may, upon notice and after affording an opportunity to be heard, strike the appearance of any attorney in a particular case for failure, without adequate cause, to attend any hearing, conference or other proceeding. The fact that an attorney's residence or office is located at a place distant from the District of Columbia does not constitute grounds for rescheduling or failing to attend court proceedings.

(h) CERTIFICATION BY NON-MEMBERS OF THE BAR OF THIS COURT

An attorney who appears, files papers and practices in this Court pursuant to (e), (f) or (g) above, shall file certification of personal familiarity with the Local Rules of this Court and, as appropriate, the other materials set forth in Rules 701(b)(6) and 701.1(a) simultaneously with each initial appearance by the attorney before a judge of this Court.

LCrR 44.2

NUMBER OF COUNSEL

Except by permission of the court only one attorney on each side shall examine a witness, address the court on a question arising in a trial, or address the court or jury in final argument.

LCrR 44.3

PRACTICE BY LAW STUDENTS

(a) ACTIVITIES.

A law student certified pursuant to this rule may:

(l) Enter an appearance in this court in any criminal or civil case if the client on whose behalf the law student is appearing has consented in writing to that appearance, and a "supervising lawyer", as hereinafter defined, has also indicated written approval of that appearance.

(2) Engage in activities on behalf of the client in all ways that a licensed attorney may, under the general supervision of the supervising lawyer; however, a student may make no binding commitments on behalf of a client absent prior client and supervisory approval; and in any matters, including depositions, in which testimony is taken the student must be accompanied by the supervising lawyer. Documents or papers filed with the court must be read, approved, and co-signed by the supervising lawyer.

(3) The court retains the authority to establish exceptions to such activities, and also to limit a student's participation in any individual case.

(b) STUDENT, PROGRAM AND SUPERVISOR REQUIREMENTS.

(l) **STUDENT REQUIREMENTS.**

In order to be certified pursuant to this Rule a law student shall:

(i) Be a law student in good standing, enrolled in and attending a law school approved by the American Bar Association;

(ii) Have completed at least four semesters of legal studies, or the equivalent;

(iii) Have knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, and the Code of Professional Responsibility;

(iv) Be enrolled for credit in a law school clinical program which has been certified by this court;

(v) Be certified by the dean of the law school, or the dean's designee, as being of good character and sufficient legal ability, and as being adequately trained, in accordance with paragraphs I-iv above, to fulfill the responsibilities as a legal intern to both the client and the court;

(vi) Be certified by this court to practice pursuant to this Rule;

(vii) Neither ask for nor receive any fee or compensation of any kind from the client on whose behalf service is rendered, nor under the Criminal Justice Act, under this Rule; but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency or the government from paying compensation to the eligible law student nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(2) **PROGRAM REQUIREMENTS.**

The program:

(i) Must be a law school clinical practice program for credit, in which a law student obtains academic and practice advocacy training, utilizing attorneys certified by the dean of the law school for practice supervision;

(ii) Must be certified by this court;

(iii) Must be conducted in such a manner as not to conflict with normal court schedules;

(iv) May accept compensation other than from a client such as Criminal Justice Act (CJA) payments;

(v) Must maintain malpractice insurance for its activities.

(3) **SUPERVISOR REQUIREMENTS.**

The person under whose supervision an eligible law student does any of the things permitted by this rule shall:

(i) Be a member in good standing of the bar of this court;

(ii) (a) Have faculty or adjunct faculty status at the responsible law school and be certified by the dean of the law school as being of good character and sufficient legal ability and as being adequately trained to fulfill the responsibilities of a supervisor; or

(b) Be a member of the bar of this court for at least two years, who after the certification by the dean of the law school as being of good character and adequately trained to fulfill the responsibilities of a supervisor, is determined by the court to be competent to carry out the role of supervising attorney;

(iii) Be certified by this court as a student supervisor;

(iv) Be present with the student at all times in court, and at other proceedings in which testimony is taken;

(v) Co-sign all pleadings or other documents filed with the court;

(vi) Supervise concurrently no more than 10 students carrying clinical practice as their entire academic program, with a proportionate increase in the number of students as their percentage of time devoted to clinical practice may be less;

(vii) Assume full personal professional responsibility for student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;

(viii) Assist and counsel the student in activities mentioned in this Rule, and review such activities with the student, all to the extent required for the proper practical training of the student and the protection of the client;

(ix) Be responsible to supplement oral or written work of the student as necessary to ensure proper representation of the client.

(c) CERTIFICATION OF STUDENT, PROGRAM AND SUPERVISOR.

(1) **STUDENT:**

(i) Certification by the law school dean and approval by the court shall be filed with the Clerk, and unless it is sooner withdrawn, shall remain in effect until expiration of 18 months;

(ii) Certification to appear in a particular case may be withdrawn by the court at any time, in the discretion of the court, and without any showing of cause.

(2) **PROGRAM:**

(i) Certification of a program by the court shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the court;

(ii) Certification of a program may be withdrawn by the court at the end of any academic year without cause, or at any time, provided notice stating the cause for such withdrawal is furnished to the law school dean and supervisor.

(3) **SUPERVISOR:**

(i) Certification of a supervisor must be filed with the Clerk, and shall remain in effect indefinitely unless withdrawn by the court;

(ii) Certification of a supervisor may be withdrawn by the court at the end of any academic year without cause, or at any time upon notice and a showing of cause;

(iii) Certification of a supervisor may be withdrawn by the dean by mailing a notice to that effect to the Clerk.

LCrR 44.4

PRACTICE BY LAW CLERKS AND COURT EMPLOYEES

Law clerks and secretaries to judges of this court, and all other persons employed in any capacity by this court, shall not engage in the practice of law while so employed. A law clerk or secretary to a particular judge of this court shall not, at any time after separating from that position, engage in any activity as an attorney or advisor, nor permit his or her name to appear as an attorney on any paper filed in this court, in connection with any case that was pending on that judge's docket during his or her term of service. Any other person employed in any capacity by this court shall not, for a period of two years after separating from that position, engage in any activity as an attorney or advisor in connection with any case that was pending in this court during his or her term of service. Each former law clerk, secretary or other employee of this court, as well as persons employing or associating with them in the practice of law before this court, shall have the responsibility of enforcing the provisions of this rule. Evidence of a failure to comply with this rule shall be referred to this court's Committee on Grievances.

LCrR 44.5

ENTRY AND WITHDRAWAL OF APPEARANCES BY ATTORNEYS IN CRIMINAL ACTIONS

(ii ENTRY OF APPEARANCE.

An attorney appearing for a defendant in a criminal case, whether appointed or retained, shall file with the Clerk a notice of appearance on a court-approved form. If a defendant appears without counsel at arraignment, the court shall set a date and time by which counsel shall enter an appearance or the defendant, after being fully advised of his right to counsel, shall waive such right and elect to proceed *pro se*.

(b) CERTIFICATE OF FAMILIARITY WITH SENTENCING GUIDELINES.

Every attorney who appears as sole or lead counsel in a criminal case must have on file with the Clerk's Office a certificate, in a form prescribed by the Clerk, in which the attorney states that he or she is familiar with the Federal Sentencing Guidelines. If the attorney has filed such a certificate during the previous three years (see Rule 701.1), a new certificate is not necessary.

(c) CONTINUING DUTY OF REPRESENTATION.

An attorney who enters an appearance shall continue to represent the defendant until the case is dismissed, the defendant is acquitted, or the time for filing post-trial motions and a notice of appeal has expired, unless the attorney is granted leave to withdraw by the court.

(d) WITHDRAWAL OF COUNSEL.

An attorney who has appeared in a criminal case may thereafter withdraw only by written motion served upon the defendant personally or at the defendant's last-known address, and upon all other parties. The court may deny a motion to withdraw if the attorney's withdrawal would unduly delay trial of the case, or be unfairly prejudicial to any party, or otherwise not be in the interests of justice.

(e) COUNSEL FOR THE GOVERNMENT.

Upon the return of an indictment or bill of information, the United States shall designate an Assistant United States Attorney or other attorney of the Department of Justice as its representative. The United States Attorney shall advise the Clerk and the judge to whom the case is assigned regarding any change in the attorney for the United States responsible for the prosecution.

COMMENT TO RULE LCrR 44.5: *The significant changes are that the former requirement that counsel continue to represent the defendant on appeal, unless granted leave to withdraw by the Court of Appeals, is deleted as not reflecting current practice, and the provision for appointment of counsel is deleted as unnecessary in view of 18 U.S.C. §3006A and paragraph 5(f)(1) of the Speedy Trial Plan.*

LCrR 45.1

SPEEDY TRIAL

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Amendments Act of 1979 (Pub. L. No 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act, as amended (18 U.S.C. §§5036, 5037), the judges of the United States District Court for the District of Columbia have adopted a Speedy Trial Plan to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings. A copy of the Speedy Trial Plan is available from the Clerk's Office.

COMMENT TO LCrR 45.1: *This rule incorporates the Speedy Trial Plan but removes the full text from the rule. Copies of the Plan are available upon request from the Clerk's office. Many federal courts utilize this procedure and do not restate the full Plan in the rules.*

LCrR 46.1

CONDITIONS OF RELEASE

(a) REPORT OF THE PRETRIAL SERVICES AGENCY.

The District of Columbia Pretrial Services Agency shall make personnel available in the courthouse to interview arrested defendants at all times during which magistrate judges are available for presentments. The Pretrial Services Agency shall interview each arrested defendant, verify the information obtained and prepare a report. A copy of the report shall be provided to the court file, to the United States Attorney, and to the defendant's counsel. The Clerk shall notify the Pretrial Services Agency of the action taken by the magistrate judge or court with regard to conditions of release.

(b) SETTING CONDITIONS OF RELEASE.

Conditions of release shall be set by a magistrate judge or by the judge to whom the case is assigned. An application to the court for review of conditions of release fixed by a magistrate judge shall be heard upon the record certified by the magistrate judge, together with additional information that may be presented.

(c) ADVICE TO THE DEFENDANT.

When a defendant is initially released on conditions, the defendant shall be specifically informed of the consequences of a failure to appear at subsequent court dates pursuant to 18 U.S.C. 3146.

COMMENT TO LCrR 46.1: *The term "conditions of release" has been substituted for the words "bail" and "bond, " and references to the Clerk's duty to give the PSA the names of defendants for whom reports are required, and to order up defendants from jail for interviews, have been deleted as unnecessary. Pursuant to the new Bail Act, 18 U.S.C. §3145(9), the requirement that applications to modify be made to the magistrate judge before an appeal is taken has been deleted.*

LCrR 47.1

MOTIONS

(a) STATEMENT OF POINTS AND AUTHORITIES.

Each motion shall include or be accompanied by a statement of the specific points of law and authority that support the motion, including where appropriate a concise statement of facts. If a table of cases is provided, counsel shall place asterisks in the margin to the left of those cases or authorities on which counsel chiefly relies.

(b) OPPOSING POINTS AND AUTHORITIES.

Within 11 days of the date of service or at such other time as the court may direct, an opposing party shall serve and file a memorandum of points and authorities in opposition to the motion. If such a memorandum is not filed within the prescribed time, the court may treat the motion as conceded.

(c) PROPOSED ORDER.

Each motion shall be accompanied by a proposed order.

(d) REPLY MEMORANDUM.

Within five days after service of the memorandum in opposition the moving party may serve and file a reply memorandum.

(e) PAGE LIMITATIONS.

A memorandum of points and authorities in support of or in opposition to a motion shall not exceed 45 pages and a reply memorandum shall not exceed 25 pages, without prior approval of the court. Documents that fail to comply with this provision shall not be filed by the Clerk.

(f) ORAL HEARINGS.

A party may in a motion or opposition request an oral hearing, but its allowance shall be within the discretion of the court. If at the time of the hearing the moving party fails to appear, the court may treat the motion as withdrawn; if the opposing party fails to appear, the court may treat the motion as conceded.

(g) MOTIONS TO AMEND PLEADINGS.

A motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended. The amended pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

(h) NAMES OF PERSONS TO BE SERVED WITH PROPOSED ORDERS, JUDGMENTS AND STIPULATIONS.

Each proposed order, judgment and stipulation shall have appended to it or endorsed upon it a list of the names and addresses of all attorneys entitled to be notified of its entry. If a party is not represented by an attorney, the name and address of the party shall be included.

LCrR 49.1

FORM AND FILING OF PLEADINGS AND OTHER PAPERS

(a) PLACE AND MANNER OF FILING.

All papers relating to pending action shall be filed with the Clerk unless otherwise directed by the court.

(b) CORRESPONDENCE WITH COURT.

Except when requested by a judge, correspondence shall not be directed by the parties or their attorneys to a judge, nor shall papers be left with or mailed to a judge for filing.

(c) NUMBER OF COPIES.

The original and one copy of every pleading, motion or other paper shall be filed with the Clerk.

(d) ELECTRONIC TRANSMISSION.

No pleading, motion or other document shall be transmitted to the Clerk for filing by means of electronic facsimile transmission except with express leave of Court.

(e) NAME AND ADDRESS OF PARTIES AND ATTORNEYS.

The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party. Where a person is sued in an official capacity, the person's official address shall be used. If the party is appearing *pro se,* the caption shall also include the party's telephone number. Those filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each party. Failure to provide the address information within 30 days upon filing may result in the dismissal of the case against the defendant. All papers signed by an attorney shall contain the name, address, telephone number, and bar identification number of the attorney. Notice of a change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 10 days of the

change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.

(f) FORM OF PAPERS.

All papers shall be typed (double spaced) or reproduced by any duplicating or copying process that produces a clear black image on opaque white paper 11 inches long and 8-1/2 inches wide, unfolded, without back or cover, fastened at the top. Every paper shall contain a heading under the caption describing the nature of the pleading, motion or other paper. Papers should also be punched at the top with two holes, 2 3/4 inches apart and 3/8 inch from the top, to facilitate insertion in the file jacket. The case number on every paper shall be followed by the initials of the judge to whom the case has been assigned. If the case has been referred to a magistrate judge, the magistrate judge's initials shall also be shown. All exhibits or attachments to papers should reflect the number of the case in which they are filed.

(g) VERIFICATION.

Whenever any matter is required or permitted by law or by rule to be supported by the sworn written statement of a person (other than a deposition, oath of office, or oath required to be taken before a specified official other than a notary public), the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form:

(l) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(ii If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)"

(h) SEALED OR CONFIDENTIAL DOCUMENTS

(1) Absent statutory authority, no cases or documents may be sealed without an order from the Court. Any pleading filed with the intention of being sealed shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed on the public record.

(2) Unless otherwise ordered or otherwise specifically provided in the these Local Rules, all documents submitted for a confidential *in camera* inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope/box needed to accommodate the documents. The envelope/box containing such documents shall contain a conspicuous notation that carries "DOCUMENTS UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(3) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope/box shall also contain the date of any order, or the reference to any statute permitting the item sealed.

(4) Filings of sealed materials must be made in the Clerk's Office during the business hours of 9:00 a.m. and 4:00 p.m., daily except Saturdays, Sundays and legal holidays. Filings at the security desk are prohibited because the Security Officers are not authorized to accept this material.

LCrR 49.2

PROOF OF SERVICE

Proof of service of papers required or permitted to be served, other than those for which a different method of proof is prescribed by the Federal Rules of Civil Procedure or by statute, shall be filed with such papers. The proof shall show the date and manner of service, and may be by certificate of an attorney of record or other proof satisfactory to the court. Failure to make proof of service does not affect the validity of service. The court may at any time allow the proof to be amended or supplied, unless to do so would unfairly prejudice a party.

LCrR 53.1.1

PHOTOGRAPH, TAPE RECORDING, AND BROADCASTING IN THE COURTHOUSE

The taking of photographs and operation of tape recorders inside the United States Courthouse and radio or television broadcasting from inside the courthouse during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate Judge, whether or not court is actually in session, are prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings. Contents of official tapes that are made as part of the record in a case will be treated in the same manner as official stenographic notes.

LCrR 56.1

CLERK'S OFFICE

The office of the Clerk shall remain open for the transaction of business from 9:00 P.M. until 4:30 P.M. daily except Saturdays, Sundays and legal holidays. Papers, except for sealed material, that must be filed on a given date may be delivered after 4:30 P.M. to the security desk at the John Marshall Park entrance to the courthouse. Papers found to be in compliance with these rules will be filed as of the date they were delivered to the security desk. Documents that are being filed under seal pursuant to a protective order must be filed in the Clerk's Office during business hours because the Security Officers are not authorized to accept this material.

LCrR 56.2

CUSTODY OF EXHIBITS IN CRIMINAL CASES

(a) PRIOR TO VERDICT.

A party in a criminal proceeding shall retain its exhibits until they are marked for identification and received in evidence. All exhibits shall thereafter be retained by the Clerk until verdict except that exhibits consisting of narcotics, weapons, money or articles of high monetary value shall be retained by the United States Attorney during adjournments.

(b) AFTER VERDICT.

In cases where a verdict of not guilty or a judgment of acquittal is entered or a mistrial declared, each party shall immediately retake its exhibits from the Clerk unless otherwise ordered by the court. In cases where a verdict of guilty is entered the Clerk shall retain all exhibits, except those exhibits described in section c of this Rule. If no appeal is perfected, each party shall retake its exhibits from the Clerk within 30 days after the date of final disposition of the case in this court. If an appeal is perfected, each party shall retake its exhibits from the Clerk within 30 days after final disposition of the case by the appellate courts.

(c) SPECIAL EXHIBITS.

Exhibits consisting of narcotics, weapons, money or articles of high monetary value shall be transmitted by the Clerk to the United States Attorney or a designee who shall receipt for them. Exhibits offered by any party which are large and unwieldy, such as diagrams, models, physical displays, etc., shall also be so transmitted unless otherwise ordered by the court. The United States Attorney shall preserve and maintain in custody all exhibits so transmitted for the periods of time specified in section (b) of this Rule.

(d) DESTRUCTION OF EXHIBITS.

If any party, having received notice from the Clerk to retake exhibits as provided in section (b) of this Rule, fails to do so within 30 days of the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

LCrR 57.1

PUBLICATION OF AMENDMENTS

Any amendment to these rules shall be published in The Daily Washington Law Reporter before its adoption. The notice shall state that the proposed amendment will be adopted unless modified or withdrawn after receiving comments from organized bar associations, members of the bar, and the public. Such comments shall be submitted in writing within 45 days of publication to the Chairman of the Advisory Committee on District Court Rules. If the court determines there is an immediate need for a particular local rule or amendment to an existing local rule, it may proceed without public notice and opportunity for comment, but the court shall promptly thereafter afford such notice and opportunity for comment.

COMMENT TO LCrR 57.1 AS AMENDED 10/10/90: *This amendment brings the rule in compliance with 28 U.S.C. §2071(e) which permits the court to dispense with notice and comment if the court "determines that there is an immediate need for a [local] rule" and if the court "promptly thereafter affords] such notice and opportunity for comment."*

LCrR 57.2

SCHEDULING AND CONTINUANCES

(a) SCHEDULING.

All hearings, conferences and trials shall be scheduled by the judge to whom the case is assigned, except that matters referred to a magistrate judge shall be scheduled by the magistrate judge.

(b) CONTINUANCES.

No application for a continuance of a hearing, conference or trial shall be made unless notice of the application has been given to all other parties. An application for a continuance shall be ruled upon by the judge or magistrate judge before whom the hearing, conference or trial is to be held.

(c) NOTICE.

The Clerk shall give notice to counsel of every matter set by the court, unless the matter is scheduled orally in open court in the presence of counsel for all parties, in which case further notice is not required.

LCrR 57.3

STIPULATIONS

A stipulation need not be considered by the court unless it is in writing and signed by the parties thereto or their attorneys, or stenographically recorded in court or during a deposition.

LCrR 57.4

BONDS AND SURETIES

Any bond or undertaking required in a proceeding must be set by an order or by consent. The bond or undertaking may be in the form of a surety, cash or check. A surety holding authority from the Secretary of the Treasury to do business in the District of Columbia and having an agent for service of process therein may be approved by the Clerk and filed. No officer of the court or member of the bar in active practice will be accepted as a surety.

LCrR 57.5

AVOIDANCE AND RESOLUTION OF CONFLICTS IN ENGAGEMENTS OF COUNSEL AMONG THE COURTS IN THE DISTRICT OF COLUMBIA

The following provisions, which implement the "Procedures for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia" dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, shall apply to matters scheduled in this court:

(a) PRIORITY TO BE ACCORDED APPELLATE COURTS.

Trial proceedings in this court will yield, and if under way will be held in abeyance, during argument by trial counsel in an appellate court.

(b) PRIORITIES IN TRIAL COURTS.

Actual trials of civil or criminal cases in this court or in the Superior Court will be accorded priority over any nontrial matters in either court. For the purpose of this rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section c of this Rule, counsel should have more than one trial set on one day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judge will be receptive to counsel's application for a change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(4) The judges of this court insofar as practical, will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this court will attempt to accommodate these situations by recognizing the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) RESPONSIBILITIES OF COUNSEL.

It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled.

They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave three open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for, or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance notify by telephone the judge's courtroom deputy of that fact, the reason therefore and the nature and duration of the conflicting engagements.

(5) If an attorney has a criminal felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that day or for any date thereafter during which that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than one other misdemeanor case for trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by this Rule.

LCrR 57.6

APPLICATIONS FOR RELIEF IN A CRIMINAL CASE BY PERSONS NOT PARTIES TO THE CASE

Any news organization or other interested person, other than a party or a subpoenaed witness, who seeks relief relating to any aspect of the proceedings in a criminal case shall file an application for such relief in the Miscellaneous Docket of the Court. The application shall include a statement of the applicant's interest in the matter as to which relief is sought, a statement of facts and a specific prayer for relief. The application shall be served on the parties to the criminal case and shall be referred by the Clerk to the trial judge assigned to the criminal case for determination.

LCrR 57.7

RELEASE OF INFORMATION BY ATTORNEYS AND COURT PERSONNEL

(a) CONDUCT OF COURT PERSONNEL.

Courthouse supporting personnel, including, among others, marshals, court clerks, law clerks, messengers, court reporters and employees or subcontractors retained by the court-appointed official reporters, shall not disclose to any person without specific authorization by the court, information relating to any pending criminal proceeding, including a grand jury proceeding, that is not part of the public records of the court, nor shall any such personnel discuss the merits involved in any such proceeding with any members of the public.

(b) CONDUCT OF ATTORNEYS IN CRIMINAL CASES.

(1) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which the lawyer or the law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(2) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(3) From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in apprehension of the accused or to warn the public of any dangers he or she may present;

(ii) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(iii) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(iv) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(v) The possibility of a plea of guilty to the offense charged or a lesser offense;

(vi) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges.

(3) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

(5) Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

(c) ORDERS IN WIDELY PUBLICIZED OR SENSATIONAL CASES.

In a widely publicized or sensational criminal case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties, witnesses and attorneys likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

LCrR 57.8

ASSIGNMENT SYSTEM

(a) CASES TO BE ASSIGNED TO A SINGLE JUDGE.

Unless otherwise provided in these Rules, each civil and criminal case shall be assigned to a single judge in the manner provided herein.

(b) CALENDAR COMMITTEE.

The assignment of cases to judges of this Court shall be performed by the Clerk under the direction of the Calendar Committee. The Calendar Committee shall be composed of three active judges appointed by the Chief Judge for one-year terms. No judge shall be required to serve more than two successive one-year terms. All matters dealing with the assignment of cases, including but not limited to any efforts to restrain or avoid the enforcement or application of rules under this Part shall be referred to the Chairman of the Calendar Committee for resolution by the Committee.

(c) EMERGENCY JUDGE.

A judge of this Court will be available, in accordance with a schedule of assignments announced from time to time by the Chief Judge, to hear emergency civil or criminal matters on all legal holidays and weekends. The emergency judge's assignment starts at 4:30 p.m. on the day preceding the weekend and ends at 9:00 a.m. the next business day. The judge designated for emergency assignments will not be present in the Courthouse but will be reasonably available, on call, in the area.

(d) NOTICE OF TRANSFERS AND REASSIGNMENTS.

All case transfers and reassignments shall be accompanied by formal notice to the Chairman of the Calendar Committee and to the Clerk's Office Liaison. The Clerk will notify each of the judges involved and all counsel in the case of the reassignment.

LCrR 57.9

CLASSES OF CASES

(a) CLASSIFICATION.

In order to assure a more even distribution of each type of case among the judges of this Court, each civil and criminal case will be classified for assignment purposes in accordance with a set of categories established by the court on the recommendation of the Calendar Committee.

(b) DESIGNATION AT TIME OF FILING.

Upon filing the complaint in a civil action, the attorney for the plaintiff shall note the proper classification of the case on a form provided by the Clerk. In criminal cases the United States Attorney shall, at the time of the return of an indictment, note the proper classification of the case on a form provided by the Clerk.

LCrR 57.10

MANNER OF ASSIGNMENT

(a) RANDOM ASSIGNMENT.

Except as otherwise provided by these Rules, civil, criminal and miscellaneous cases shall be assigned to Judges of this court selected at random in the following manner:

(1) The Clerk shall create a separate assignment deck in the automated system for each subclassification of civil and criminal cases established by the Court pursuant to Rule 402 of these Rules and a separate deck for miscellaneous cases[3]. The decks will be created by the Liaison to the Calendar Committee or the Liaison's backup and access to this function shall be restricted to these individuals to protect the integrity and confidentiality of the random assignment of cases. The Calendar Committee will, from time to time determine and indicate by order the frequency with which each judge's name shall appear in each designated deck, to effectuate an even distribution of cases among the active judges.

(2) At the time a civil complaint is filed or an indictment or information is returned in a criminal case, the case shall be assigned to the judge whose name appears on the screen when the appropriate deck is selected. The Clerk shall also stamp on the indictment, information, complaint or other initial pleading of each case, and on the file jacket, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is begun. Notwithstanding the foregoing, a civil case, requiring an emergency hearing, which is filed after normal business hours, shall not be assigned to a judge until the next business day.

(b) ASSIGNMENT TO VISITING AND SENIOR JUDGES.

Cases may be assigned to visiting and senior judges in accordance with procedures adopted from time to time by the Calendar Committee.

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[3] For the purpose of this Rule, miscellaneous cases that will be randomly assigned will include, but not be limited to, these proceedings: (a) actions to perpetuate testimony as in Rule 27, Federal Rules of Civil Procedure; (b) actions to enforce administrative subpoenas and summonses; c proceedings ancillary to an action pending in another district; (d) supplementary proceedings brought in aid of execution; (e) motions for return of property in criminal proceedings; and (f) requests for judicial assistance. Grand Jury Miscellaneous cases will continue to be assigned to the Chief Judge and Pen Register Applications will continue to be assigned to magistrate judges.

(c) SPECIAL ASSIGNMENT BY THE CHIEF JUDGE. [Rescinded 2/1/2000]

If the Chief Judge determines at the time an indictment is returned that the case will be protracted and that the expeditious and efficient disposition of the court's business requires assignment of the case on a non-random basis, the Chief Judge may specially assign that case to any active judge or to any senior judge who consents. If the fact that a criminal case will be protracted is brought to the attention of the Chief Judge at any subsequent stage of the proceedings, the Chief Judge may determine whether the case shall remain with the judge to whom it is assigned or whether it shall be reassigned.

(d) PROCEEDINGS AFTER ASSIGNMENT.

All proceedings in a case after its assignment shall be conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules. A judge who declares a mistrial shall retain the case for subsequent proceedings including, where appropriate, retrial.

COMMENT TO LCrR 57.10: *To ensure an even distribution of cases filed on the miscellaneous docket these cases will now be randomly assigned to a Judge of this Court at the time of filing. The assigned Judge will maintain jurisdiction of the miscellaneous case for all purposes. The assignment of miscellaneous cases does not affect the duties of the Motions Judge as specified in Local Rule 408.*

LCrR 57.11

SUSPENSION OF NEW ASSIGNMENTS

A judge shall be relieved by the Calendar Committee from any new assignment of indictments and civil cases accompanied by motions for temporary restraining orders and preliminary injunctions or civil cases in which an intention to file a motion for a preliminary injunction is expressed, upon notification by the judge or the Chief Judge to the Committee that the judge: (1) has continued in a protracted trial or hearing for 10 consecutive trial days;[4] (2) is confined to a hospital; (3) is confined at home due to illness for seven days; (4) has had a death in the judge's immediate family; or (5) is performing judicial duties out of this jurisdiction pursuant to assignment. New

[4] If a judge, after suspension based upon 10 consecutive days in a trial or hearing, thereafter devotes an occasional day to other court business, that judge shall not by virtue thereof be reinstated in the complete draw.

cases shall be assigned to the judge in accordance with normal procedures upon the conclusion of any such condition.

Whenever a judge begins what is expected to be an unusually protracted criminal trial (one lasting four weeks or more) he or she may refer to the Calendar Committee for routine reassignment such other criminal cases assigned to such judge as the judge was unable to dispose of prior thereto and which are expected to require disposition pursuant to the Speedy Trial Act within the time period of the unusually protracted trial.

LCrR 57.12

RELATED CASES

(a) DEFINITION.

A related case for the purpose of this Rule means as follows:

(1) Criminal cases are deemed related when (I) a superseding indictment has been filed, or (ii) more than one indictment is filed or pending against the same defendant or defendants, or (iii) prosecution against different defendants arises from a common wiretap, search warrant, or activities which are a part of the same alleged criminal event or transaction. A case is considered pending until a defendant has been sentenced.

(2) If a civil forfeiture proceeding is filed concerning a criminal defendant, or a defendant is charged in a criminal case while a civil forfeiture proceeding is pending concerning that defendant, the civil and criminal cases are to be deemed related.

(3) Civil cases are deemed related when the earliest is still pending on the merits in the District Court and they (I) relate to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent. Notwithstanding the foregoing, a case filed by a *pro se* litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case. However, if a judge in the interest of judicial economy, consolidates a significant number of similar *pro se* prisoner complaints, or has a single case with a significant number of *pro se* prisoner plaintiffs, and any of those prisoners later files a new complaint which is unrelated to the subject matter of the consolidated cases or the multiple plaintiffs' case, the

judge who receives the new case as related may, if he or she chooses, refer the new case to the Calendar Committee for random assignment.

(4) Additionally, cases whether criminal or civil shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter.

(b) NOTIFICATION OF RELATED CASES.

The parties shall notify the Clerk of the existence of related cases as follows:

(1) At the time of returning an indictment the United States Attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States District Court. The form shall be mailed to all defense counsel along with the notification of the arraignment. Any objection by the defendant to the related case designation shall be served on the U.S. Attorney and filed with the Clerk within 10 days after arraignment.

(2) At the time of filing any civil action, the plaintiff or his attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States Court. The plaintiff shall serve this form on the defendant with the complaint. Any objection by the defendant to the related case designation shall be filed and served with the defendant's first responsive pleading or motion.

(3) Whenever an attorney for a party in a civil or criminal action becomes aware of the existence of a related case or cases, the attorney shall immediately notify, in writing, the judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties. Upon receiving information from any source concerning a relationship between pending cases, the Clerk shall transmit that information in writing to the judges on whose calendars the cases appear and to all parties to the proceeding.

(c) ASSIGNMENT OF RELATED CASES.

Related cases noted at or after the time of filing shall be assigned in the following manner:

(1) Where the existence of a related case in this court is noted at the time the indictment is returned or the complaint is filed, the Clerk shall assign the new case to the judge to whom the oldest related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related, the judge may transfer the new case to the Calendar Committee. If the Calendar Committee finds that good cause exists for the transfer, it shall cause the case to be reassigned at random. If the Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(2) Where the existence of related cases in this court is revealed after the cases are assigned, the judge having the later-numbered case may transfer that case to the Calendar Committee for reassignment to the judge having the earlier case. If the Calendar Committee finds that good cause exists for the transfer, it shall assign the case to the judge having the earlier case. If the Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(3) Where a party objects to a designation that cases are related pursuant to subparagraphs (b)(1) or (b)(2) of this rule, the matter shall be determined by the judge to whom the case is assigned. Any party may appeal to the Calendar Committee from the trial judge's decision by filing an appropriate motion with the Clerk within three days after notification of the judge's decision. The Calendar Committee in its discretion may grant a hearing or decide the appeal on the papers. The decision of the Calendar Committee shall be final.

(d) REFERRALS TO A SINGLE JUDGE BY THE CALENDAR COMMITTEE.

Upon a finding by the Calendar Committee that two or more cases assigned to different judges should be referred for a specific purpose to one judge in order to avoid a duplication of judicial effort, the Calendar Committee may enter such an order of referral. The order shall be with the consent of the judge to whom the cases will be referred and shall set forth the scope of authority of said judge. Unless otherwise provided, such an order shall not transfer any cases nor affect the assignment of future cases.

LCrR 57.13

OTHER TRANSFERS AND REASSIGNMENTS

(a) TRANSFERS BY CONSENT.

A judge, upon written advice to the Calendar Committee, may transfer directly all or part of any case on the judge's docket to any consenting judge.

(b) DEATH, RETIREMENT, APPOINTMENT OF NEW JUDGES, ETC.

When reassignments are necessitated by the death, retirement, resignation or incapacity of any judge or by the appointment of a new judge, or by any other circumstances, the Calendar Committee shall determine and indicate by order the method by which such reassignments shall be made.

(c) REASSIGNMENT OF CRIMINAL CASES.

If the Calendar Committee, giving due consideration to Rule 306 of these Rules, determines in its discretion that the interests of justice require the transfer of any criminal case from one judge to another, it may reassign the case.

(d) CALENDAR COMMITTEE CALENDAR.

Any criminal case in which the only defendant is a fugitive or is mentally incompetent to stand trial shall be assigned to the Calendar Committee by the judge upon whose calendar it appears after the case has been pending for 90 days or more. In cases involving two or more defendants, in the event that one or more are fugitives or are mentally incompetent to stand trial, the case may go to trial as to those defendants who are not fugitives and are not mentally incompetent to stand trial. Upon the entry of a final judgment as to such defendants, the case shall be assigned to the Calendar Committee for further action as to those defendants who are fugitives or mentally incompetent to stand trial. Additionally, the case of any criminal defendant who becomes a fugitive subsequent to a guilty plea but prior to sentencing shall be assigned to the Calendar Committee by the judge upon whose calendar the case had appeared after such a fugitive has been an absconder for 90 days or more. The Calendar Committee may assign one or more judges for the purpose of making a periodic call of such cases. The judge or judges so assigned shall from time to time consult with the United States Attorney to ascertain whether dismissals of particular criminal actions or civil commitment of defendants incompetent to stand trial shall be deemed advisable. If the reasons which made a case untriable cease to exist, the case shall be reassigned for trial to the transferring judge.

(e) TRANSFERS NOT PROVIDED FOR BY OTHER RULES.

If a case is transferred to the Calendar Committee for any reason not otherwise provided for in this title, and the Calendar Committee approves the transfer, it shall cause the case to be reassigned by random lot or otherwise as these Rules provide.

LCrR 57.14

DUTIES OF THE CHIEF JUDGE

In addition to the trial of such cases as he may undertake and other duties provided by these Rules, the Chief Judge shall:

(l) preside at the assignment of criminal cases;

(2) hear and determine requests for excuse from service on grand and petit juries;

(3) empanel the grand jury and hear and determine all matters relating to proceedings before the grand jury;

(4) receive indictments from the grand jury;

(5) consider applications for allowance under the Criminal Justice Act in a case not already assigned;

(6) dispose of matters requiring immediate action in criminal cases already assigned to any judge of the Court if that judge is unavailable or otherwise unable to hear the matters;

(7) hear and determine requests for review of rulings by magistrate judges in criminal cases not already assigned to a judge of the Court; and

(8) take such other administrative actions, after consultation with appropriate committees of the Court, as in his judgment are necessary to assure the just, speedy and inexpensive determination of cases, and are not inconsistent with these Rules.

The Chief Judge may, from time to time, reassign any of the foregoing duties to an active judge for a reasonable period.

COMMENT TO LCrR 57.14: *Paragraph (8) has been added to affirm the power of the Chief Judge to take other appropriate administrative actions not inconsistent with the Rules.*

LCrR 57.15

SANCTIONS IMPOSED

(a) COURT OFFICERS AND EMPLOYEES.

No officer or employee of the court may reveal to any other person, other than members of the Calendar Committee, the procedures for creating decks in the automated system or any list that may show the composition of any deck. No court officer or employee may number or assign any case other than in the manner provided in these rules or in the manner ordered by the Calendar Committee. An officer or employee who violates this provision shall be subject to discharge from service.

(b) THIRD PARTIES.

No person shall directly or indirectly cause, or procure, or attempt to cause or procure, a court officer or employee to reveal to any person, other than the members of the Calendar Committee, the sequence of the judges' names within each block of assignment cards, or to number or assign any case otherwise than herein provided or as ordered by the Calendar Committee. A violation of this rule may be punished as a contempt of court.

LCrR 57.16

COMPLAINTS AGAINST JUDGES

The Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), authorizes that complaints against United States circuit, district, bankruptcy, and magistrate judges who have "engaged in conduct prejudicial to the effective, and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability" may be submitted to a judicial committee for review.

Written complaints may be filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit, 333 Constitution Avenue, N.W., Room 5409, Washington D.C. 20001.

Comment to LCrR 57.16: *At its March 15, 1994 session, the Judicial Conference of the United States adopted resolutions regarding judicial misconduct and disability that call for certain actions by each United States District Court, as well as by the circuits and national courts covered by the Judicial Conduct and Disability Act of 1980, codified at 28 U.S.C. § 372(c). One of the Judicial Conference resolutions urged that a reference to the Act be included in the local rules of each district court. This new rule implements that suggestion.*

LCrR 57.17

DUTIES AND POWERS OF MAGISTRATE JUDGES

(a) GENERAL DUTIES.

The United States Magistrate Judges appointed by this Court pursuant to 28 U.S.C. §631 shall have the duty and the power to:

(l) Act as committing magistrate judge in holding preliminary hearings for violations of the United States Code.

(2) Issue arrest warrants or summonses for violations of the United States Code.

(3) Issue search warrants.

(4) Conduct federal removal proceedings and issue warrants of removal as provided in Rule 40, Federal Rules of Criminal Procedure.

(5) Conduct international extradition proceedings.

(6) Administer oaths and affirmations and take acknowledgments, affidavits and depositions.

(7) Impose or review conditions of release under applicable federal law.

(8) Order the return or the forfeiture of collateral or surety bonds.

(9) Issue subpoenas, *writs of habeas corpus ad testificandum,* or *habeas corpus ad proseduendum,* or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(10) Order lineups, photographs, fingerprinting, palm-printing, voice identification, medical or physical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion sampling (with any appropriate medical safeguards required by due process considerations) and handwriting exemplars.

(11) Ascertain whether defendants in criminal cases docketed in this Court are represented by counsel and, in instances where any defendant is financially unable to obtain counsel, appoint counsel to represent the defendant throughout all proceedings in this Court.

(12) Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. §1782.

(13) Conduct proceedings and enter orders as described in Rules 502 and 505 of these Rules.

(14) Refer a defendant to an available facility for a preliminary opinion; hear motions, and enter orders for examinations to determine mental competency; and conduct competency hearings to determine a defendant's ability to understand and to participate in any proceeding which a magistrate judge is authorized to conduct.

(15) Conduct hearings and enter orders regarding persons believed to be mentally ill found in certain federal reservations, in accordance with 21 D.C. Code §§ 901-909.

(16) Perform any additional duty not inconsistent with the Constitution and laws of the United States.

(b) POWERS EXERCISED AT THE REQUEST OF A JUDGE.

At the request of the judge to whom the case is assigned, a magistrate judge shall have the duty and power to:

(1) Conduct proceedings and enter orders or recommendations as described in LCrR 57.18 and LCrR 57.19 of these Rules.

(2) Dismiss indictments on motion of the United States Attorney and with the consent of the defendants.

(3) Conduct arraignments to the extent of taking and entering pleas of not guilty.

(4) Enter scheduling orders and exercise other powers provided in Rules 16 and 26(f), Federal Rules of Civil Procedure, and LCvR 16.3 and LCvR 76.3 of these Rules.

(5) Serve as a special master in civil actions pursuant to Rule 53, Federal Rules of Civil Procedure.

(6) Conduct *voir dire* and select petit juries.

(7) Accept petit jury verdicts in civil cases in the absence of a judge.

(8) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure.

(c) POWERS EXERCISED AT THE REQUEST OF THE CHIEF JUDGE.

At the request of the Chief Judge, the magistrate judge shall have the duty and power to:

(1) Receive indictments returned by the grand jury and issue bench warrants, when necessary, for defendants named in the indictments.

(2) Conduct proceedings incident to the transfer of cases pursuant to Rule 20, Federal Rules of Criminal Procedure.

COMMENT TO LCrR 57.17: *The rule has been revised to make it clear that a magistrate judge's authority to make competency determinations is limited to proceedings which a magistrate judge is authorized to conduct and is not a final dispositive order on the question of a defendant's competency to stand trial. Determinations as to competency of a defendant to stand trial will continue to be made by the trial judge.*

LCrR 57.18

REFERRAL OF MOTIONS AND PRETRIAL MATTERS TO MAGISTRATE JUDGES

(a) MATTERS DETERMINABLE BY A MAGISTRATE JUDGE.

At the request of the judge to whom the case is assigned, a magistrate judge may hear and determine any pretrial motion or matter other than those motions specified in LCvR 72.3 of these Rules, and may conduct pretrial proceedings and enter orders pursuant to LCvR 16.4 of these Rules.

(b) MOTION FOR RECONSIDERATION OF THE MAGISTRATE JUDGE'S RULING.

Any party may request the judge to reconsider a magistrate judge's ruling under paragraph (a) by filing a motion to reconsider within 10 days after being served with the order of the magistrate judge, unless a different time is prescribed by the magistrate judge or the judge. The motion shall specifically designate the order or part thereof to which objection is made, and the basis for the objection.

(c) BASIS FOR RECONSIDERATION.

Upon a motion for reconsideration or *sua sponte*, a judge may modify or set aside any portion of a magistrate judge's order under this rule found to be clearly erroneous or contrary to law. A judge may modify or set aside any portion of a magistrate judge's order pursuant to Rule 209 of these Rules whenever the judge deems such a modification necessary or appropriate.

LCrR 57.19

REFERRAL OF MATTERS FOR HEARING AND RECOMMENDATION BY MAGISTRATE JUDGES

(a) MATTERS REFERABLE TO A MAGISTRATE JUDGE FOR HEARING AND RECOMMENDATION.

At the request of the judge to whom the case is assigned, a magistrate judge may conduct hearings, including evidentiary hearings, and submit to the judge proposed findings of fact and recommendations for the disposition of:

(l) applications for posttrial relief made by individuals convicted of criminal offenses;

(2) prisoner petitions challenging conditions of confinement;

(3) applications for revocation of probation, in accordance with LCrR 57.1c of these Rules;

(4) motions for injunctive relief (including temporary restraining orders and preliminary injunctions);

(5) motions for judgment on the pleadings, for summary judgment, to dismiss an indictment or information made by the defendant, or otherwise to dismiss an action involuntarily;

(6) motions to set aside default judgments;

(7) petitions for judicial review of administrative determinations; and

(8) petitions for civil commitment arising under Title III of the Narcotic Addict Rehabilitation Act of 1966, 18 U.S.C. §4251, *et seq.*

(b) OBJECTION TO RECOMMENDATIONS OF THE MAGISTRATE JUDGE.

Any party may file written objections to the magistrate judge's proposed findings and recommendations issued under paragraph (a) within ten days after being served with a copy thereof. The objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection.

Failure to file timely objections may waive appellate review of a District Court order adopting the magistrate judge's report. All magistrate judge's reports shall contain a notice substantially as follows:

Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of appeal from an order of the District Court adopting such findings and recommendations. See *Thomas v. Arn,* 474 U.S. 140 (1985).

(c) DETERMINATION BY THE COURT.

A judge shall make a *de novo* determination of those portions of a magistrate judge's findings and recommendations to which objection is made as provided

in paragraph (b). A judge may make a determination based solely on the record developed before the magistrate judge, or may conduct a new hearing and receive further evidence. The judge may also receive further evidence and recall witnesses. A judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge, or may recommit the matter to the magistrate judge with instructions.

COMMENT TO LCrR 57.19(b) AS AMENDED 10/10/90: *This amendment is designed to provide litigants with the notice required by the Supreme Court in* Thomas v. Arn. *In that case, the Supreme Court held that the Courts of Appeals may find a waiver of the right to appeal a District Court order adopting a magistrate judge's report and order unless timely objections are filed with the District Court. As LCvR 72.3 currently reads, litigants would reasonably conclude that failure to file objections within ten days waives the right to District Court review of the magistrate judge's report. However, without notice, it does not logically follow that failure to timely object would also waive the right to appellate review of the magistrate judge's recommendations and orders. Every Circuit, except the District of Columbia, has adopted some type of waiver rule. The D.C. Circuit has not yet addressed the issue.*

LCrR 57.20

REFERRAL OF MISDEMEANOR CASES TO MAGISTRATE JUDGES FOR ALL PURPOSES

(a) JURISDICTION TO CONDUCT TRIALS OF MISDEMEANOR CASES.

A magistrate judge may conduct trials (with or without a jury), accept pleas, impose sentence, and otherwise exercise jurisdiction in cases of misdemeanor offenses in accordance with 18 U.S.C. §3401 and Rule 58, Federal Rules of Criminal Procedure.

(b) REQUEST FOR STENOGRAPHIC REPORTER.

In the case of a misdemeanor other than a petty offense, the proceedings shall be stenographically reported upon request of a party made at the time of execution of the written consent to be tried by the magistrate judge, or at such other later time as the magistrate judge may allow.

(c) PRESENTENCE INVESTIGATION AT THE REQUEST OF A MAGISTRATE JUDGE.

When requested by a magistrate judge, the Probation Service shall conduct a presentence investigation and render a report on any person convicted or who pleads guilty or *nolo contendere* before the magistrate judge.

(d) PAYMENT OF FIXED SUM IN LIEU OF APPEARANCE.

In accordance with Rule 58(d), Federal Rules of Criminal Procedure, the magistrate judge may in suitable types of misdemeanor cases accept payment of a fixed sum in lieu of appearance. In such cases, payment of the fixed sum shall terminate the proceeding. A schedule of fixed sums for misdemeanor cases subject to this rule shall be approved by the court on recommendation of the magistrate judges. The schedule may provide that the fixed sums will be increased depending on the stage of the proceedings at which the sum is paid, but the sum shall not exceed the maximum fine which could be imposed upon conviction.

COMMENT TO LCrR 57.20: *The changes to LCrR 57.20(a) and (d) are technical in nature and reflect the abrogation, effective December 1, 1990, of Rules 1 through 9 of the Rules of Procedure for the Trial of Misdemeanors Before United States Magistrate Judges.*

LCrR 57.21

ADMISSION TO THE BAR

(a) WHO MAY BE ADMITTED.

Admission to and continuing membership in the bar of this Court are limited to attorneys who are (1) active members in good standing in the District of Columbia Bar; or (2) active members in good standing of the highest court of any state in which the attorney maintains his/her principal law office and is a member in good standing of a United States District Court that provides for reciprocal admission to members of the bar of this Court.

(b) PETITION FOR ADMISSION.

Each applicant for admission shall file with the Clerk at least ten days prior to hearing thereon (unless for good cause shown the judge shall shorten the time) a written petition for admission on a form supplied by the Clerk stating:

(l) applicant's residence and office addresses and office telephone number;

(2) the court where and date when admitted;

(3) applicant's legal training and experience;

(4) whether the applicant has ever been held in contempt of court and, if so, the nature of the contempt and the final disposition thereof;

(5) whether the applicant has ever been convicted of any crime (other than minor traffic offenses) or publicly reprimanded, publicly censured, suspended, disciplined or disbarred by any court, and, if so, the facts and circumstances connected therewith; and

(6) that the applicant is familiar with:

(i) the provisions of the Judicial Code (Title 28 U.S.C.) which pertain to the jurisdiction of and practice in the United States District Courts;

(ii) the Federal Rules of Civil or Criminal Procedure;

(iii) the Rules of the United States District Court for the District of Columbia; and

(iv) the Code of Professional Responsibility as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific rule of this Court, and that he/she will faithfully adhere thereto.

(c) AFFIDAVIT OF A MEMBER OF THE BAR.

The petition shall be accompanied by an affidavit of an attorney who is a member in good standing of the Bar of this Court who has known the applicant for at least one year stating when the affiant was admitted to practice in this Court and how long and under what circumstances the

attorney has known the applicant and a statement of the applicant's character and experience at the bar. The affidavit shall be on a form supplied by the Clerk.

(d) HEARING ON THE PETITION.

The petition for admission shall be placed on the calendar of the Motions Judge and shall be heard on the first Monday of each month. If the first Monday is a holiday, the petition shall be heard on the following Monday. If the petition is granted, the applicant shall take the oath of office.

(e) OATH.

The oath which each applicant for admission to the Bar of this Court shall take shall be as follows:

> I do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will respect courts of justice and judicial officers; that I will well and faithfully discharge my duties as an attorney and as an officer of the court; and in the performance of those duties I will conduct myself with dignity and according to both the law and the recognized standards of ethics of our profession.

(f) ADMISSION FEE.

Each petition shall be accompanied by payment in such amount and form as determined by the Court, which the Clerk shall deposit to the credit of a fund to be used for such purposes as inure to the benefit of the members of the bench and the Bar in the administration of justice which are determined to be appropriate by the Court from time to time. This fee shall be in addition to the statutory fee for administering the oath of office and issuing the certificate of admission.

(g) CLERK AS AGENT FOR SERVICE.

By being admitted to the Bar of this Court or by being permitted to practice in this Court under LCrR 44.1 and LCrR 57.23 or in fact practicing in this Court, the attorney shall be deemed to have designated the Clerk of the Court as agent for service of process in any disciplinary proceeding before this Court.

COMMENT TO LCrR 57.21: *This Rule clarifies the intention that continuing membership in the Bar is premised on a continuing duty to meet the requirements of this Rule. Section (a) parallels revised LCrR 44.1 regarding practice by attorneys.*

Section (b) is changed to require listing an office telephone number and the court and date admitted to practice when applying for admission. Subsection (b)(5) modifies the requirement to disclose conviction of a crime to eliminate the requirement to list minor traffic offenses. The oath in section (e) has been revised to conform to the shorter oath adopted by the Court on May 6, 1986. The duty to notify the Court of a change in address described in section (g) remains the same, but for the first time the Rule provides that the failure to maintain a current address with the Clerk of this Court constitutes a separate ground for discipline. The most significant change in LCrR 57.21 is that section (h) has been added to provide an alternate method of service on the attorney in disciplinary cases when service cannot be effectuated because the attorney has not maintained a current address. The new Rule provides that the Clerk of the Court is automatically designated as agent for service of process. The provisions in sections (g) and (h) have been added to eliminate service problems as part of an overall effort to simplify the Court's disciplinary procedures.

LCrR 57.21.1

RENEWAL OF MEMBERSHIP

(a) RENEWAL OF MEMBERSHIP EVERY THREE YEARS.

Each member of the bar of this Court shall renew his or her membership every three years by filing with the Clerk of the Court, on or before July 1st of every third year, a certificate in a form prescribed by the Clerk that the member is familiar with the then-current version of the Federal Rules of Civil Procedure, Federal Rules of Evidence, the Local Rules of this Court, and the Code of Professional Responsibility. If the attorney appears in criminal cases, he or she must also certify familiarity with the then-current version of the Federal Rules of Criminal Procedure and the Sentencing Guidelines. (See LCrR 44.5(b).) Members of the bar of this Court on the effective date of this rule shall file certificates by March 1, 1990, and by July 1 of every third calendar year thereafter. Subsequently admitted members shall file certificates by July 1st of every third calendar year after the year in which they were admitted. The Clerk shall notify members of this certification requirement at least 60 days before the date for filing such certificates and renewals.

(b) RENEWAL FEE.

Each certificate required by (a) above shall be accompanied by a payment of $25 in a form determined by the Clerk. The fee shall be $10 for the initial certificate filed by any person admitted to the bar of this Court after July 1, 1986. The Clerk shall deposit the fees received to the credit of the fund described in LCvR 83.8(f) to be used for the purposes specified in that rule, including the defraying of expenses of maintaining a current register of members in good standing and to administer the counseling program outlined in LCrR 57.31.

(c) FAILURE TO RENEW.

An attorney who fails to file the required certifications and pay the renewal fee shall be provisionally removed from the list of members in good standing. The name of the attorney shall be restored to the list of member in good standing upon filing of the required certificates and payment of the delinquent fee within five years after the due date. At the end of five years from the due date, the name will be permanently removed from the roll, without prejudice to an application for admission as a new member.

LCrR 57.22

COURT APPOINTED REPRESENTATION

(a) Attorneys who are members in good standing of the Bar of this Court shall be required to assist or represent the needy in civil matters before this Court whenever requested by the Court and, if necessary, without compensation and to accept appointments under the Criminal Justice Act unless exempted by rule or statute.

(b) Attorneys who are members in good standing of the Bar of the District of Columbia or of any United States Court or of the highest court of any state may assist or represent the needy in civil matters before this Court without compensation, provided that such attorneys file a certificate under LCrR 44.1(g) and comply with the provisions of LCrR 57.26.

LCrR 57.23

RULES OF DISCIPLINARY ENFORCEMENT

(a) PROMULGATION OF RULES.

This Court, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it under LCrR 44.1 or LCrR 57.21 of these Rules, or who are admitted for the purpose of a particular proceeding *(pro hac vice)*, or who otherwise appear before the Court, promulgates the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated. These Rules shall become effective on May 1, 1987, provided, however, that any formal disciplinary proceeding then pending before this Court shall be concluded under the procedure existing prior to the effective date of these Rules.

(b) ATTORNEYS SUBJECT TO RULES.

These Rules shall apply to all attorneys admitted to membership in the Bar of this Court, to all attorneys permitted to practice before this Court under LCrR 44.1, and to all attorneys who appear before this Court or who participate in proceedings, whether admitted or not. All attorneys to whom these Rules apply shall be subject to the disciplinary jurisdiction of this Court for any alleged misconduct arising in connection with such proceeding. All such attorneys shall also be deemed thereby to have designated the Clerk of the Court as agent for service of process under these Rules governing discipline and disciplinary proceedings.

COMMENT TO LCrR 57.23: *Section (a) incorporates the former Preamble to the Rules of Disciplinary Enforcement. Section (b) is new and was added to make clear that the Court has authority to discipline all attorneys who appear before it, whether admitted or not. Because this Rule is broader in its application than either LCvR 83.2 or 83.8, it restates the provision that all attorneys subject to these Rules shall be deemed to have designated the Clerk of the Court as agent for service of process for purposes of the disciplinary rules.*

LCrR 57.24

DISCIPLINARY PANEL

(a) APPOINTMENT.

The Chief Judge shall appoint three judges of the Court to be known as the Disciplinary Panel and shall appoint two additional judges to serve as alternate members. The Disciplinary Panel shall have jurisdiction over all judicial proceedings involving the disbarment, suspension, censure or other discipline of attorneys subject to these Rules.

(b) POWERS OF INDIVIDUAL JUDGES.

Nothing contained in these Rules shall be construed to deny to this Court or to any individual judge or United States Magistrate Judge thereof or to the United States Bankruptcy Judge such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure, or to deprive any judge or magistrate judge of his/her inherent power of discipline for conduct committed in the presence of the Court.

COMMENT TO LCrR 57.24: *Section (a) was rewritten for clarity and brevity to set out the composition and purpose of the Disciplinary Panel. Section (b) makes clear the power of an individual judge, Bankruptcy Judge or Magistrate, Judge to maintain control over proceedings through the contempt power or otherwise to discipline for conduct in the presence of the Court.*

LCrR 57.25

COMMITTEE ON GRIEVANCES

(a) APPOINTMENT.

There shall be established a standing committee appointed by the Court to be known as the Committee on Grievances (the "Committee") consisting of six or more members of the Bar of this Court appointed for terms of three years and until their successors have been appointed. The terms of the members shall be staggered so as to provide continuity. No member of the Committee on Grievances shall serve more than two consecutive terms.

The Court shall designate a Chairman of the Committee and a Vice Chairman who shall act in the absence or disability of the Chairman. Members of the Committee shall serve without compensation except that the Court may authorize payments in lieu of expenses from fees collected by the Clerk pursuant to Rule LCrR 57.21(f).

(b) DUTIES.

The Committee shall be charged with receiving, investigating, considering and acting upon complaints against all attorneys subject to these Rules. LCrR 57.23(b) relating to disbarment, suspension, censure, reprimand or other disciplinary action, and petitions for reinstatement of attorneys.

(c) CLERK.

The Clerk shall with approval of the Court, appoint a Clerk to the Committee who shall have all powers vested in a Deputy Clerk of the Court. The Clerk to the Committee shall assist the Committee, maintain records of its proceedings, investigations and prosecutions, and proceed as otherwise set forth in these Rules.

(d) CONFIDENTIALITY AND IMMUNITY.

All proceedings before the Committee involving allegations of misconduct of an attorney and all documents and charges presented to the Committee shall remain confidential and privileged. All formal charges prepared by the Committee and directed to be filed by the Court, attorney or grievance cases filed with the Clerk of the Court, court orders, and subsequent pleadings, answers or responses filed therein shall be matters of public record.

All meetings and hearings of the Committee shall be held *in camera* and the business conducted therein shall remain confidential and privileged. The Committee's Chairman or, in the Chairman's absence or disability, the Vice Chairman shall have discretion in determining the manner and extent of cooperating with disciplinary agencies from other jurisdictions. All records and minutes of the Committee shall be maintained under seal and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power delegated by the Court, Committee members shall be absolutely immune from suit for any conduct in connection with their duties. Complaints submitted to the Committee on Grievances pursuant to LCrR 57.27 shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

COMMENT TO LCrR 57.25: *Section (c) governs the responsibilities of the Clerk to the Committee. The most important change is Section (d) which is added to describe the practice of the Committee on Grievances and the Court relating to confidentiality and disclosure of disciplinary proceedings. It clarifies existing practice by explicitly stating which proceedings are confidential and which are not. The Rule does not bar disclosure of information by order of the Chief Judge or his/her designee in connection with judicial appointments. In addition, consistent with rules of other courts and recent case law, the Rule provides that Committee members shall be immune from suit for conduct in the course of their duties in exercising the power delegated to the Committee members by the Court.*

LCrR 57.26

OBLIGATIONS OF ATTORNEYS

(a) RULES OF PROFESSIONAL CONDUCT.

Violations of the Rules of Professional Conduct (as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific Rule of this Court) by attorneys subject to these Rules shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

(b) DUTY TO NOTIFY THE COURT.

It shall be the duty of each attorney subject to these Rules to notify promptly the Clerk of this Court of:

(1) conviction for any crime other than minor traffic offenses, giving the name of the court in which the attorney was convicted, the date of conviction, docket number, the offense for which the attorney was convicted and the sentence;

(2) any disbarment, suspension or other public discipline imposed by any federal, state or local court, giving the name of the court, the date of such disbarment, suspension or other public discipline, the docket number, and a description of the discipline imposed and the offense committed in connection therewith; or any disbarment by consent or resignation while an investigation into allegations of misconduct is pending;

(3) whether the attorney has ever been held in contempt of court and if so, the nature of the contempt and the final disposition thereof; and

(4) any change in the attorney's office address or telephone number as provided for in c below.

Failure to provide the notice required by this paragraph may constitute a separate ground for discipline.

(c) CHANGES IN ADDRESS.

Notice to the Clerk of any change in the attorney's address or telephone number (see (b)(4) above) shall be filed in writing within 10 days of the change. The attorney shall also within 10 days file a *praecipe* reflecting such change in each case which the attorney has pending before this Court, serving a copy upon each of the attorneys in these cases.

(d) DUTIES OF THE CLERK UPON NOTIFICATION.

Upon being informed that an attorney subject to these Rules has been convicted of any crime, disciplined by any court, held in contempt by any court, disbarred by consent, or resigned from any Bar pending an investigation into allegations of misconduct, the Clerk shall promptly obtain a certified or exemplified copy of such conviction, disciplinary judgment or other court order and present it to the Committee which shall proceed in accordance with these Rules.

COMMENT TO LCrR 57.26: *Section (b) combines several former Rules relating to an attorney's obligations under these Rules to notify the Court of certain facts: (1) conviction of crime; (2) disbarment, suspension or public discipline; (3) citation for contempt; and (4) change in address or telephone number. The duty of notification in LCrR 57.26(b) regarding public discipline does not include sanctions imposed under civil rules other than contempt as specified in subsection (b)(3). Failure to provide notice may constitute grounds for disciplinary action.*

Section (c) has been added to impose on the Clerk to the Grievance Committee the duty to obtain a certified or exemplified copy of such conviction, disciplinary judgment or court order.

LCrR 57.27

GROUNDS AND PROCEDURES FOR DISCIPLINE

(a) SERVICE OF PROCESS.

Service of process under these Rules shall be made by certified mail addressed to the attorney (hereinafter attorney or respondent) at the last known address or at the last recorded address filed with the Clerk of the Court as required pursuant to LCrR 57.21(g). If service cannot be so made, service shall be sufficient when served on the Clerk of this Court and all time periods specified in these Rules shall run from the time of such service. If service is made by serving the Clerk, a courtesy copy shall be mailed to the respondent by first class mail at his/her last known address.

(b) ATTORNEYS CONVICTED OF CRIMES.

(l) FELONIES.

Upon presentation to the Disciplinary Panel of a certified copy of a court record demonstrating that an attorney subject to these Rules has been found guilty of a felony in any court, the attorney shall be immediately suspended from practicing before this Court by order of the Disciplinary Panel, whether the finding resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of an appeal. The Disciplinary Panel may defer entry of the order or set aside an order of suspension when it appears to the Panel in the interest of justice to do so.

Upon presentation of proof that the conviction is final, and regardless of the pendency of an appeal or other review of the conviction or of a Petition for *Writ of Certiorari*, the respondent shall be disbarred and the attorney's name shall be struck from the roll of members of the Bar of this Court by order of the Disciplinary Panel, unless within a period of 30 days from the date of the order, the respondent shows cause why disbarment would not be in the interest of justice.

(2) **MISDEMEANORS.**

An attorney subject to these Rules who shall be convicted in any court of a misdemeanor may be disciplined in such manner and to such extent as the Disciplinary Panel may determine and may upon petition of the Committee and for good cause shown, be temporarily suspended pending a final decision of the Disciplinary Panel.

Upon receipt of a certified copy of such judgment of conviction, the Committee shall obtain an order from the Disciplinary Panel requiring the respondent to show cause within thirty days after service in accordance with LCrR 57.27(a) why the attorney should not be disciplined. If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response thereto if it so desires. The Committee shall serve a copy of its response, if any, upon the respondent or respondent's counsel of record by first class mail or, failing that, in accordance with LCrR 57.27(a).

Upon the filing of the respondent's Answer to the Order to Show Cause and any response thereto by the Committee, or if no answer has been filed, upon the filing of a recommendation by the Committee, the matter shall be promptly submitted to the Disciplinary Panel for its consideration. The Disciplinary Panel may, in its discretion, schedule a hearing. If a hearing is scheduled, the Chairman or designated member(s) of the Committee shall appear at the hearing and offer proof or arguments pertinent to the issues. After the hearing or, if no hearing is scheduled, upon a review of the papers submitted, the Disciplinary Panel shall take such action as these Rules and justice may require. In all proceedings hereunder the certified copy of judgment of conviction shall constitute conclusive proof of the respondent's guilt of the conduct for which the respondent was convicted. The pendency of an appeal or other review of the conviction or of a petition for *writ of certiorari* will not constitute a ground for failing to proceed in accordance with this Rule absent extraordinary circumstances and for good cause shown.

(3) **REINSTATEMENT FOLLOWING SUSPENSION.**

An attorney suspended under LCrR 57.27(b)(1) or (2) will be reinstated immediately upon the filing of a certificate demonstrating that the conviction has been reversed, vacated, or set aside, but the reinstatement will not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of the available evidence.

(c) DISCIPLINE IMPOSED BY OTHER COURTS.

(l) **POLICY OF RECIPROCAL DISCIPLINE.**

An attorney subject to these Rules who has been suspended for more than 30 days or disbarred by another court shall be automatically suspended from practice in this Court. The suspension shall be effective upon service of a Temporary Suspension and Show Cause Order in accordance with these Rules. An attorney who has been suspended for 30 days or less by another court shall have the fact of that discipline noted by the Clerk on the Lawyers' Register maintained by this Court, and no further proceedings shall be had thereon, unless the Committee on Grievances shall determine that the facts underlying the discipline warrant a proceeding for the imposition of discipline by this Court. Notations on the Lawyers' Register do not constitute discipline imposed by the Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

COMMENT TO LCrR 57.27(c)(1): *Typically, an order of suspension entered by the District* of *Columbia Court of Appeals by its terms is effective 30 days from the date of its entry. The disciplinary Panel of this Court signs its Temporary Suspension and Show Cause Order after the effective date of suspension order in the other court.*

Since a respondent has 30 days within which to answer an order to show cause in this Court, a short-term suspension by another court has often expired and a respondent automatically reinstated in the other court before the time an answer is due in this Court. Thus, no useful purpose is served by initiating reciprocal disciplinary proceedings in cases involving suspensions of 30 days or less.

(2) **ISSUANCE OF TEMPORARY SUSPENSION AND SHOW CAUSE ORDER.**

Upon receipt of a certified or exemplified copy of a judgment or order from another court suspending or disbarring an attorney subject to these Rules, the Disciplinary Panel of this Court shall issue a Temporary Suspension and, Show Cause Order suspending the attorney from practice before this Court pending a final disposition under these Rules, except where it finds extraordinary circumstances. Respondent may answer and show cause within 30 days after service

of the Order why the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(3) **DUTIES OF THE CLERK.**

The Clerk to the Committee thereupon shall cause to be served on the attorney the following documents: a copy of the judgment or order of discipline imposed by the other court; a certified copy of this Court's Temporary Suspension and Show Cause Order; and a copy of LCrR 57.27.

(4) **PROCEDURES WHEN RESPONDENT FAILS TO ANSWER.**

If respondent fails to answer to show cause within 30 days from service of the Temporary Suspension and Show Cause Order, this Court shall issue an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it deems appropriate, unless it finds that upon the face of the record on which the discipline by the other court is predicated it clearly appears:

(i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) that proof establishing the misconduct gives rise to a reasonable doubt that this Court could not, consistent with its duty, accept as final the conclusion of the disciplining court; or

(iii) that the imposition of the same discipline by this Court would result in grave injustice; or

(iv) that the misconduct established is deemed by this Court to warrant substantially different discipline; or

(v) that the misconduct on which the discipline was imposed by the other court does not constitute misconduct in the District of Columbia.

Where this Court determines that any of these elements exist, it shall enter such other order as it deems appropriate.

(5) **PROCEDURES WHEN RESPONDENT ANSWERS.**

If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response and make a recommendation to the Court. Upon consideration of the papers submitted by the respondent and by the Committee, the Court shall either (l) enter an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it might find appropriate, or (2) if the Court finds that, upon the face of the record on which the discipline in another jurisdiction is predicated it clearly appears that one or more of the factors listed in subparagraphs (4)(i)-(v) exists, it shall enter such other order as it deems appropriate.

(6) **CENSURE OR REPRIMAND.**

Where discipline imposed by the other court is a public censure or reprimand, the Clerk shall note the fact of that discipline on the Lawyers' Register maintained by this Court, and no further proceedings shall be had thereon. Notations on the Lawyers' Register do not constitute discipline imposed by this Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

(7) **STAYS.**

If the discipline imposed by another court has been stayed, any reciprocal discipline proceeding in this Court may, upon motion of the respondent, be deferred by order of this Court until the stay expires and until further order of this Court. In the absence of a stay of discipline imposed by such other court, neither a motion for reconsideration or motion for rehearing or rehearing *en banc* filed in the other court or petition for a writ of *certiorari* will be the basis for a deferral of the proceedings in this Court absent good cause shown.

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT.

(1) **COMPLAINTS GENERALLY.**

Any person seeking to charge an attorney subject to the Rules with any act or omission which may justify disbarment, suspension, censure, reprimand or other discipline shall do so in writing, subscribed and under oath or affirmed under the penalty of perjury pursuant to the United States Code, Title 28, Section 1746. The

Complaint shall be presented to the Committee by lodging it with the Clerk to the Committee. The Committee shall have the inherent power without any formal Complaint to inquire into misconduct of attorneys subject to these Rules.

(2) **COMPLAINTS BY A COURT OR A JUDGE.**

Any court, judge or United States magistrate judge in the District of Columbia may refer to the Committee the name of any attorney subject to these Rules on a Complaint that such attorney has engaged in conduct which, if substantiated, would warrant the imposition of discipline.

(3) **INVESTIGATION.**

Complaints received by the Committee shall be reviewed to determine if the Complaint is appropriate for action. If the Complaint is insufficient on its face to warrant investigation, the Committee may discharge the Complaint and advise the complainant that no action will be taken. If the Committee decides that the Complaint or information otherwise received by the Committee requires action, the Committee is authorized to (l) investigate the matter itself; (2) refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals; (3) informally seek information from the respondent; or (4) require a formal Answer from the respondent in accordance with subsection (d)(4). To further any investigation, the Chairman, or in his absence, the Vice Chairman is authorized to issue subpoenas commanding the production of books, papers, documents, records or tangible items. If following any of these actions the Committee decides no further action is warranted, the Committee may, if its investigation was based on receipt of a complaint, discharge the Complaint and so inform the complainant and the respondent. If the Committee's investigation was based on information otherwise received and the respondent was made aware by the Committee of its investigation, the Committee shall notify the respondent that it has decided that no further action is warranted.

(4) **SERVICE OF COMPLAINT; ANSWER.**

If the Committee determines that a formal Answer is required from the respondent, a copy of the Complaint as received by the Committee or as prepared by it based on information otherwise received shall be served upon the respondent and he/she shall be required to answer within 30 days after the date of service. An Answer to a Complaint shall be in writing, subscribed and under oath or affirmed under the penalty of perjury in a form prescribed by the provisions of the United States Code, Title 28, Section 1746 and shall be accompanied by a list of all courts before which the respondent is admitted to practice. Upon receipt of the Answer, the Clerk to the Committee shall mail a copy thereof to the complainant, if there is one, who may reply to the Answer within 14 days of the date of the transmittal letter from the Clerk of the Committee. A copy of any reply to the Answer to the Complaint shall be served upon the respondent. If a respondent is served with a copy of a Complaint by the Committee and fails to answer within the time allowed by these Rules, the matter shall be certified to the Disciplinary Panel for its appropriate action.

(5) **SUBCOMMITTEE OF INQUIRY.**

The Chairman may designate three members of the Committee to sit as a Subcommittee of Inquiry and shall designate one as Chairman of the Subcommittee. The Chairman of the Subcommittee of Inquiry is hereby designated and appointed a Master with authority to cause subpoenas to be issued commanding the attendance of witnesses and/or parties at any hearings, as well as commanding the production of books, papers, documents, records or tangible things designated therein at such hearing. The Chairman of the Subcommittee as such Master is further authorized to administer oaths to the parties and witnesses. Should any witness and/or party fail or refuse to attend or to testify under oath, the witness' or party's name may be certified to the Disciplinary Panel of the Court, whereupon the Disciplinary Panel may refer the matter to the United States Attorney or to the U.S. Department of Justice to bring formal criminal contempt charges against such witness and/or party for so refusing. If the witness or party is found guilty of contempt, the Court shall administer such punishment as may be appropriate.

(6) **RIGHT TO COUNSEL IN DISCIPLINARY PROCEEDINGS.**

The respondent shall be entitled to be represented by counsel who may appear in the respondent's behalf at any time during the investigation or after a Complaint has been served upon respondent.

(7) **SUBMISSION OF CHARGES.**

If following investigation the Subcommittee of Inquiry recommends, and a majority of the Committee concurs, the Committee shall prepare charges and submit them to the Disciplinary Panel of the Court or, in its discretion with or without preparing charges refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals with a request that that Office take whatever action it deems appropriate. If submitted to the Disciplinary Panel and the Panel orders the charges to be filed, the Clerk shall file them and issue a summons directed to the respondent, commanding respondent to answer. The summons and a copy of the charges shall be served in accordance with these Rules. The respondent shall answer the charges within 30 days after the effective date of service and shall file with the Answer a list of all courts before which the attorney is admitted to practice. If no Answer is received within 30 days or such additional time as the Disciplinary Panel may allow, the charges may be taken as admitted and the Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order.

(8) **HEARINGS AND ORDERS OF THE DISCIPLINARY PANEL OF THE COURT.**

When the respondent has filed an Answer, the case shall be set down for hearing before the Disciplinary Panel and a member of the Committee designated by the Chairman shall appear at the hearing to offer proof or arguments pertinent to the issues. If the charges are sustained by clear and convincing evidence, the Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order. Any knowing violation of the order of judgment shall be deemed a contempt of court.

(e) DISBARMENT ON CONSENT.

(l) **BY THIS COURT.**

Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may not resign from this bar, but may consent to disbarment. The attorney must deliver to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(i) the attorney's consent is freely and voluntarily given; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting; and

(ii) the attorney is aware that there is presently pending an investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth.

Upon receipt of the required affidavit, the Disciplinary Panel shall enter an order disbarring the attorney. The order disbarring the attorney on consent shall be a matter of public record, but the affidavit shall be sealed and not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(2) **BY OTHER COURTS.**

Any attorney admitted to practice before this Court who shall be disbarred on consent or who shall resign from the Bar of any court of the United States or from the Bar of any State, Territory, District, Commonwealth or Possession of the United States while an investigation into allegations of misconduct is pending, shall so advise this Court and submit a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation. If no such order or judgment is submitted, the Clerk shall obtain it from the other court. The Disciplinary Panel thereupon shall enter an order disbarring the attorney and directing that the attorney's name be stricken from the roll of attorneys admitted to practice before this Court unless the attorney shows why it would not be in the interest of justice to do so. A certified or exemplified copy of the judgment or order accepting such disbarment on consent or

resignation is conclusive proof of such disbarment on consent or resignation.

COMMENT TO LCrR 57.27: *LCrR 57.27 outlines the grounds and procedures for discipline of: attorneys convicted of crimes; attorneys disciplined by other courts; attorneys who are the subject of complaints of misconduct filed in this Court; and attorneys disbarred on consent.*

Section (a) governs service of process in disciplinary proceedings. It makes clear that the primary method of service is by mail and the alternative method is by service on the Clerk of the Court.

Section (b) provides for immediate suspension upon proof of a felony conviction. The Disciplinary Panel may defer or set aside entry of the order in the interest of justice. This provision is to be invoked only in extraordinary circumstances. The Rule further provides for disbarment upon final conviction, regardless of the pendency of an appeal or other review, unless respondent shows cause within 30 days why disbarment would not be in the interest of justice.

With respect to misdemeanors, the Rule essentially maintains the show cause procedures currently in effect under former Rule 4-3(i)(b). With respect to both felonies and misdemeanors, the Rule makes clear that the pendency of an appeal or other review of conviction or of a petition for writ of certiorari *does not affect the imposition of discipline. This provision was added to solve the recurring problem of a year or more delay attendant on petitions for* certiorari, *during which time the attorney might be permitted to practice before this Court.*

Subsection (b)(3) has been added to provide for reinstatement after suspension upon proof that the underlying conviction has been reversed, vacated or set aside.

Section (c) governs discipline imposed by other courts and is a significant change from former Rule 4-3(II). The new Rule provides that an attorney subject to these Rules who is suspended or disbarred by another court shall be suspended from practice in this court during the pendency of disciplinary proceedings. The procedures adopted are consistent with the practice in the United States Supreme Court, many United States Courts of Appeals and a number of other district courts. By providing the attorney an

opportunity to show cause why reciprocal discipline should not be imposed, the Rule satisfies the due process requirements of the relevant Supreme Court cases. See, e.g., In Re Ruffalo, *390 U.S 544 (1968);* Theard v. United States, *354 U.S. 278 (1957);* Selling v. Radford, *243 U.S. 46 (1917). The new Rule corrects the inadequacies of the former show cause procedures that permitted a respondent to continue to practice during the pendency of disciplinary proceedings. The revised procedure, requiring immediate temporary suspension followed by a show cause order, shifts the burden of going forward to the respondent to show cause why identical reciprocal discipline should not be imposed.*

The new provision for suspension eliminates the procedure of noting short-term suspensions imposed by other courts on this Court's records, rather than imposing reciprocal discipline (former Rule 4-3(i)(e)). Those procedures were unworkable and caused inequities. Under the new procedures, censures and reprimands will be noted, but reciprocal discipline proceedings will be followed in the case of all suspensions or disbarments.

Subsection (c)(7) has been added to make clear that if discipline imposed by another court has been stayed, reciprocal discipline in this Court may be deferred. However, in the absence of a stay, neither a motion for reconsideration nor a motion for rehearing or rehearing en banc *nor a petition for writ of* certiorari *serves to defer disciplinary proceedings in this Court absent good cause shown.*

*Section (d) sets forth in one section all the procedures relating to Complaints filed in this Court. Subsection (d)(*l*) specifies that the Committee has the inherent power to inquire into misconduct of attorneys subject to these Rules, without formal Complaint. Subsection (d)(3) has been revised to grant to the Committee at the investigative stage as well as at the hearing stage the authority to use subpoenas commanding the production of books, papers, documents, records or tangible items. It also specifies that the Committee can act based on a Complaint or information otherwise received, and is authorized to discharge a Complaint during the investigative stage. Subsection (d)(7) clarifies existing practice by stating that if a respondent fails to respond after a formal complaint is filed, the Disciplinary Panel has the power to take the allegations as admitted and impose appropriate discipline. Subsection (d)(8) sets forth the clear and convincing standard of proof for the imposition of discipline.*

Section (e) governs disbarment on consent. It is revised to make clear that there can be disbarment on consent in this Court or reciprocal disbarment for disbarment on consent by another court. It changes the former Rule by providing that an attorney under investigation or subject to pending proceedings involving allegations of misconduct may not resign from the Bar of this Court, but may only consent to disbarment.

*Revised subsection (e)(*l*) governing disbarment on consent by this Court makes two substantive changes. First it permits the attorney affidavit, which is the predicate for disbarment on consent, to be filed under seal. Second, it eliminates the former requirement that an affidavit filed by an attorney seeking disbarment on consent contain an acknowledgment that the material facts alleged are true. This revision was adopted because it was felt that it was in the public interest to encourage consent disbarments.*

With respect to disbarment on consent or resignation in other courts, subsection (e)(2) is changed only to the extent of providing the attorney an opportunity to show cause why such disbarment would not be in the interest of justice.

LCrR 57.28

NOTIFICATION TO DISCIPLINARY AUTHORITIES

(a) NOTIFICATION TO OTHER COURTS.

When any person subject to these Rules has been convicted of any crime or disbarred, suspended, reprimanded, censured or disbarred on consent by this Court, the Clerk shall within ten days transmit to the disciplinary authorities in any other jurisdictions or courts in which the attorney is admitted to practice, a certified copy of the conviction or a certified copy of the judgment or order of disbarment, suspension, reprimand, censure or disbarment on consent. The Clerk shall also serve a certified copy of such judgment or order and a copy of such notice upon the respondent in accordance with LCrR 57.27(a).

(b) NOTIFICATION TO NATIONAL DISCIPLINE DATA BANK.

The Clerk shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

COMMENT TO LCrR 57.28: *LCrR 57.28 has been adopted from the Model Rules of Disciplinary Enforcement. The purpose is to foster cooperation in reporting disciplinary actions.*

LCrR 57.29

REINSTATEMENT

(a) AFTER DISBARMENT OR SUSPENSION.

An attorney suspended for a specific period shall be automatically reinstated at the end of the period upon the filing with the Court of an affidavit of compliance with the provisions of the order of suspension (including, in the case of reciprocal discipline, proof that the attorney has been reinstated by the court in which the attorney was disciplined). An attorney suspended for an indefinite period may not resume practice until the suspension is terminated by an order of the Disciplinary Panel. A disbarred attorney may not resume practice until reinstated by order of the Disciplinary Panel.

(b) TIME OF APPLICATION FOLLOWING DISBARMENT OR SUSPENSION FOR INDEFINITE PERIOD.

A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the order of disbarment. A person who has been suspended for an indefinite period may not apply for termination of the suspension until after the expiration of the mini-mum period fixed by the order of suspension or, if no minimum period is fixed, for a period of three years, or, in the case of reciprocal discipline, upon proof that the attorney has been reinstated by the court in which the attorney was disciplined.

(c) HEARING ON APPLICATION.

Petitions for reinstatement under this Rule shall be filed with the Clerk to the Committee. The Committee shall have 30 days within which to respond. The attorney shall have the burden of demonstrating by clear and convincing evidence that he/she has met the conditions of reinstatement or termination of suspension as provided for under these Rules. The Disciplinary Panel may hold a hearing on the application or, in its discretion, decide the matter on the basis of the papers filed.

(d) CONDITIONS OF REINSTATEMENT OR TERMINATION OF SUSPENSION.

If the Disciplinary Panel finds the attorney unfit to resume the practice of law, the petition for reinstatement shall be denied. If the Disciplinary Panel finds the attorney fit to resume the practice of law, it shall issue an order reinstating the attorney or terminating the suspension. The order may make

reinstatement or termination of the suspension conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the attorney's misconduct which led to the suspension or disbarment. In the discretion of the Disciplinary Panel, reinstatement or termination of suspension may also be conditioned upon the furnishing of proof of competency and learning in the law, which proof may include certification by the Bar Examiners of a State or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of indefinite suspension or disbarment.

(e) SUCCESSIVE PETITIONS.

No petition for reinstatement or for termination of suspension under this Rule shall be filed within one year following an order denying a petition for reinstatement or termination of suspension filed by or on behalf of the same person.

(f) NOTIFICATION OF REINSTATEMENT.

Upon entry of an Order of Reinstatement or an Order Terminating Suspension, the Clerk shall promptly notify the same persons who notified of the disciplinary orders.

COMMENT TO LCrR 57.29: *Section (a) is modified to include the provision that to apply for reinstatement in the case of reciprocal discipline, the attorney must submit proof of reinstatement by the court in which the attorney was disciplined. Section c is modified to provide that the Committee will have 30 days to respond to a petition for reinstatement. The provision outlining the respondent's burden in obtaining reinstatement is modified to require proof that the respondent has met the conditions of reinstatement under these Rules.*

Section (d) sets forth the conditions for reinstatement, in substance the same as former Rule 4-3(VII)(d). It is changed to state that the Disciplinary Panel has the discretion to condition reinstatement or termination of suspension upon proof of competency and learning in the law, eliminating the provision that such proof would only be required if the disbarment or suspension lasted for five years or more. Section (f) has been added to provide for notification of reinstatement to the attorney.

LCrR 57.30

PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE MENTALLY INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED

(a) ATTORNEYS DECLARED INCOMPETENT OR PHYSICALLY INFIRM.

If an attorney who is subject to these Rules has been judicially declared incompetent or involuntarily committed to a mental hospital, or has resigned from the bar of any court or been suspended from such a bar on the basis of such mental incompetence or incapacity or on the basis of physical infirmity or illness, the Disciplinary Panel, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon such attorney, his/her guardian and the administrator of any hospital or other institution if the Court is informed such attorney is a patient thereof in such manner as the Disciplinary Panel may direct.

(b) ATTORNEYS ALLEGED TO BE INCAPACITATED.

Whenever the Committee shall petition the Disciplinary Panel to determine whether an attorney who is subject to these Rules is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. Failure or refusal to submit to such examination shall be *prima facie* evidence of incapacity. If upon due consideration of the matter the Disciplinary Panel concludes that the attorney is incapacitated from continuing to practice law it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until further order of the Court.

The Disciplinary Panel may provide for such notice to the attorney of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the attorney if the attorney is without representation.

(c) CLAIM OF DISABILITY DURING DISCIPLINARY PROCEEDINGS.

If during the course of a disciplinary proceeding the attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness or because of the use of drugs or intoxicants which makes it impossible for the attorney to defend adequately, the Disciplinary Panel shall enter an order immediately suspending the attorney from continuing to practice law until a determination is made of the attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of paragraph (b) above.

(d) APPLICATION FOR REINSTATEMENT.

Any attorney suspended under this Rule for incompetency, mental illness, physical infirmity or because of the use of drugs or intoxicants may apply to the Disciplinary Panel for reinstatement immediately and thereafter once a year or at such shorter intervals as the Disciplinary Panel may direct in the order of suspension. The application shall be granted by the Disciplinary Panel upon a showing by clear and convincing evidence that the attorney's disability has been removed and that the attorney is fit to resume the practice of law provided, however, that if the suspension was based on resignation from the bar of another court the attorney must provide proof that the attorney has been reinstated in the other court, or that, if the suspension from practice before this Court was based on a finding of incompetence or incapacity by another court, it clearly appears on the face of the record that any of the five elements set forth in LCrR 57.27(c)(4) exist. The Disciplinary Panel may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney. The Disciplinary Panel may direct that the expenses of such an examination shall be paid for by the attorney.

If an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the Disciplinary Panel may dispense with further evidence and direct the reinstatement of the attorney upon such terms as it deems proper and advisable.

(e) EVIDENTIARY HEARING.

If the Disciplinary Panel holds an evidentiary hearing to determine whether an attorney is incapacitated or on an attorney's application for reinstatement under this Rule, the Chairman of the Committee shall appoint one or more

members of the Committee to appear for the purpose of examining and cross-examining witnesses and/or offering proof or argument pertinent to the issues.

(f) WAIVER OF PHYSICIAN-PATIENT PRIVILEGE.

The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any physical patient privilege with respect to any treatment of the attorney during the period of the attorney's disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since the attorney's suspension and the attorney shall furnish the Disciplinary Panel with written consents for such psychiatrists, psychologists, physicians or hospital to disclose such information or records as may be requested by the medical experts designated by the Disciplinary Panel.

COMMENT TO LCrR 57.30: *Section (a) is modified to cover attorneys who have resigned from the bar of any court or been suspended from any bar on the basis of mental incompetence, or incapacity, or on the basis of physical infirmity or illness. Section (d) is modified to provide that application for reinstatement following suspension based on resignation from the bar of another court will require proof of reinstatement in the other court.*

LCrR 57.31

COUNSELING

(a) REFERRAL OF ATTORNEYS FOR COUNSELING.

Judges may refer to the counseling panel established by this rule any member of the bar of this Court who exhibits a deficiency in performance and who, in the judge's opinion, would likely benefit from counseling by other trial attorneys on matters of litigation practice, ethics, or apparent abuse of alcohol or drugs. The judge will notify the panel of the referral and the basis therefor, and may also notify the attorney. The referral shall be confidential.

(b) THE COUNSELING PANEL.

The counseling panel shall be composed of experienced litigation practitioners appointed by the Court, one of whose members shall be designated chairperson.

(c) PANEL PROCEEDINGS.

The chairperson of the counseling panel shall receive references from judges and assign the referred member to a particular panel member for counseling. Participation in the counseling program by referred attorneys shall be voluntary. Any conversations between the referred attorney and members of the panel shall be confidential and shall not waive any attorney client privilege. The panel will make no findings or report of its action as to any referred attorney, other than a report to the referring judge as to whether the attorney did or did not participate in counseling.

(d) CONFIDENTIALITY AND IMMUNITY.

All documents and communications relating or referring to the panel's referrals shall remain confidential and privileged.

All meetings and discussions of the counseling panel shall be held *in camera* and the business conducted therein shall remain confidential and privileged. All records, reports, correspondence and minutes of the panel shall be maintained by the Chairperson of the Counseling Panel and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power relegated by the court, panel members shall be absolutely immune from suit for any conduct in connection with their duties. Referrals and counseling with respect thereto shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

ADMINISTRATION OF THE BANKRUPTCY SYSTEM[1]

DCt.LBR 5011-1

REFERENCE TO BANKRUPTCY JUDGE

Pursuant to 28 U.S.C. §157(a), all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the Bankruptcy Judge of this District. All papers filed in any such case or proceeding, including the original petition, shall be filed with the Clerk of the Bankruptcy Court and shall be captioned "United States Bankruptcy Court for the District of Columbia."

COMMENT TO DCt.LBR 5011-1: *This rule implements newly enacted 28 U.S.C. §157(a) and exercises the discretion of the District Court to refer all cases under Title 11, and all proceedings arising in or related to a case under Title 11, to the Bankruptcy Judge for the District.*

DCt.LBR 5011-2

WITHDRAWAL OF REFERENCE

(a) FORM OF REQUEST; PLACE FOR FILING.

A request for withdrawal in whole or in part of the reference of a case or proceeding referred to the Bankruptcy Judge, other than a *sua sponte* request by the Bankruptcy Judge, shall be by motion filed timely with the Clerk of the Bankruptcy Court. All such motions shall conform to Local Rule LCvR 7.1 of the Local Rules of this Court. In addition, all such motions shall clearly and conspicuously state that "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE."

(b) TIME FOR FILING.

Except as provided below as to adversary proceedings and contested matters, motion to withdraw the reference of a whole bankruptcy case or any part of

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[1] Rules 5011-1 – 9033-1 deal with the interrelationship of matters (references, *de novo* reviews, appeals, etc.) between the United States District Court and the United States Bankruptcy Court. The United States Bankruptcy Court has its own local rules governing procedures within that court. Those local rules, which were last revised on January 1, 1997, remain in effect.

a bankruptcy case shall be served and filed at or before the time first scheduled for the meeting of creditors held pursuant to 11 U.S.C. §341(a). Except as provided below as to contested matters, a motion to withdraw the reference of a whole adversary proceeding or any part of an adversary proceeding shall be served and filed on or before the date on which an answer, reply or motion under Bankruptcy Rule 7012 or 7015 is first due. A motion to withdraw the reference of a contested matter within a case shall be served and filed not later than 11 days after service of the motion, application or objection which initiates the contested matter. Notwithstanding the foregoing, a motion to withdraw the reference may be served and filed not later than 11 days after service of any timely filed pleading or paper in which the basis for the motion first arises.

(c) STAY.

The filing of a motion to withdraw the reference does not stay proceedings in the Bankruptcy Court. The procedures relating to stay shall be the same as set forth in Bankruptcy Rule 8005.

(d) DESIGNATION OF RECORD.

The moving party shall serve and file, together with the motion to withdraw the reference, a designation of those portions of the record of the proceedings in the Bankruptcy Court that the moving party believes will reasonably be necessary or pertinent to the District Court's consideration of the motion. Within 11 days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. If the record designated by any party includes a transcript of any proceeding or a part thereof, that party shall immediately after filing the designation deliver to the reporter and file with the Clerk of the Bankruptcy Court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the Clerk to assemble and transmit the record. The parties shall submit only that part or parts of a transcript of proceedings relevant to the issues raised on the motion for withdrawal of reference. If the issues involve only questions of law, the parties may submit an agreed statement of facts or such part or parts of the record as are relevant to such questions of law, unless the District Judge considering the motion directs otherwise.

(e) RESPONSES TO MOTIONS TO WITHDRAW THE REFERENCE; REPLY.

Opposing parties shall file with the Clerk of the Bankruptcy Court, and serve on all parties to the matter as to which withdrawal of the reference has been

requested, their written responses to the motion to withdraw the reference, within 11 days after being served a copy of the motion. The moving party may serve and file a reply within 11 days after service of a response.

(f) TRANSMITTAL TO AND PROCEEDINGS IN DISTRICT COURT.

When the record is complete for purposes of transmittal, but without awaiting the filing of any transcripts, the Clerk of the Bankruptcy Court shall promptly transmit to the Clerk of the District Court the motion papers and the portions of the record designated. After the opening of a docket in the District Court, documents pertaining to the matter under review by the District Court shall be filed with the Clerk of the District Court, but all documents relating to other matters in the bankruptcy case or adversary proceeding or contested matter shall continue to be filed with the Clerk of the Bankruptcy Court. Any motion and any *sua sponte* request by the Bankruptcy Judge to withdraw the reference shall be referred to the Chief Judge or the Chief Judge's designee for decision, but if the matter is withdrawn it shall be assigned to a District Judge in accordance with this court's usual system for assigning civil cases, unless the Chief Judge determines that exceptional circumstances warrant special assignment to a District Judge. Upon request of this court, the Bankruptcy Judge shall determine, pursuant to 28 U.S.C. §157(b)(3), whether or not any proceeding, as to which withdrawal of the reference is sought in whole or in part, is a core proceeding. This court may, in its discretion, grant or deny the motion to withdraw the reference, in whole or in part. After such withdrawal, this Court may retain the entire matter withdrawn or may refer part or all of it back to the Bankruptcy Judge with or without instructions for further proceedings.

COMMENT TO DCt.LBR 5011-2: *This rule implements that part of 28 U.S.C. §157 which provides that District Court disposition of certain proceedings arising under Title 11 or arising in or related to cases under Title 11 may be appropriate. The rule thus:*

(a) provides for a request for withdrawal of reference by a party to be filed with the Bankruptcy Clerk with a request for relief from the District Court;

(b) provides for timely filing of such a request (note that paragraph (b) increases the time from 7 or 10 to 11 days);

(c) sets forth the procedure to obtain a stay;

(d) sets forth the procedure for designating the record for District Court disposition (note that paragraph (d) increases the time from 10 to 11 days);

(e) sets forth the procedure for contesting motions to withdraw reference (note that paragraph (e) increases the time from 7 or 10 to 11 days); and

(f) provides for the processing of the administrative aspects of a withdrawn case or proceeding in the District Court.

DCt.LBR 8003-1

INTERLOCUTORY APPEALS

Whenever the Bankruptcy Judge has entered an interlocutory order, decree or judgment as to which a motion for leave to appeal has been filed pursuant to 28 U.S.C. §158 and Rule 8003 of the Bankruptcy Rules, the Bankruptcy Judge shall, upon request of this court, submit to this court a written certification stating whether, in the Bankruptcy Judge's opinion, such order, decree or judgment involves a controlling question of law as to which there is substantial ground for difference of opinion and whether an immediate appeal from the order may materially advance the ultimate termination of the case. This court may thereupon, in its discretion, grant or deny the motion for leave to appeal.

DCt.LBR 8006-1

FAILURE TO DESIGNATE RECORD OR ISSUES

If, after an appeal to the District Court has been noted, the appellant fails to designate the contents of the record on appeal or to file a statement of the issues to be presented on appeal within the time required by Bankruptcy Rule 8006, the Clerk of the Bankruptcy Court shall forward forthwith to the Clerk of the District Court a partial record consisting of a copy of the order or judgment appealed from, the notice of appeal, a copy of the docket entries and any other part of the record that the Clerk of the Bankruptcy Court deems appropriate. On request of the District Court, the Clerk of the Bankruptcy Court shall in addition transmit any other part of the record to the Clerk of the District Court. The District Court may, upon motion of the appellee filed in the office of the Clerk of the District Court, or upon its own order, dismiss the appeal for failure to comply with Bankruptcy Rule 8006.

DCt.LBR 8007-1

RETENTION OF RECORD IN BANKRUPTCY COURT

Unless the District Court or the Bankruptcy Court otherwise orders in any particular case, the record on appeal as designated pursuant to Bankruptcy Rule 8006 shall be retained by the Clerk of the Bankruptcy Court until such time as it is requested by the District Judge to whom the appeal is assigned.

DCt.LBR 8009-1

FAILURE TO FILE BRIEF

If, after an appeal has been noted and the appellant has complied with Bankruptcy Rule 8006, the appellant fails to serve and file a brief within the time required by Bankruptcy Rule 8009, the District Court may, upon motion of the appellee filed in the office of the Clerk of the District Court, or upon its own order, dismiss the appeal for failure to comply with Bankruptcy Rule 8009.

DCt.LBR 9033-1

DE NOVO REVIEW

(a) FORM OF REQUEST; TIME AND PLACE FOR FILING.

Pursuant to 28 U.S.C. §157(c)(1), any party may request *de novo* review of proposed findings of fact and conclusions of law and a proposed final order or judgment by the Bankruptcy Judge by filing with the Clerk of the Bankruptcy Court, and serving on all parties to the matter under review within 11 days after service of a copy of such proposed findings, conclusions and order or judgment, written objections which shall specifically identify the portions of the proposed findings, conclusions, and order or judgment to which objection is made and the basis for such objection. All such objections shall conform to Local Rule 7.1 of the Local Rules of this Court and in addition shall clearly and conspicuously state that "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE."

(b) DESIGNATION OF RECORD; RESPONSES TO OBJECTIONS; REPLY; TRANSMITTAL TO AND PROCEEDINGS IN DISTRICT COURT.

The procedures for designation of record, responses to objections, reply, and transmittal to and proceedings in the District Court shall be the same as set forth in Rule 5011-2 but the matter under review shall be assigned to a District Judge in accordance with this court's usual system for assigning civil cases.

(c) *DE NOVO* CONSIDERATION BY DISTRICT JUDGE.

A District Judge shall make a *de novo* determination of those portions of the Bankruptcy Judge's proposed findings, conclusions, and order or judgment to which objection is made and may accept, reject, or modify, in whole or in part, the proposed findings, conclusions, and order or judgment by the Bankruptcy Judge. The District Judge, however, need not normally conduct a new hearing and may consider the record developed before the Bankruptcy Judge and may make a determination on the basis of that record. The District Judge may also receive further evidence, recall witnesses or re-refer the matter to the Bankruptcy Judge with instructions.

(d) EFFECT OF FAILURE TO OBJECT.

Failure to file a timely objection to the Bankruptcy Judge's proposed findings, conclusions and order or judgment shall constitute consent to determination of the proceeding by the Bankruptcy Judge, pursuant to 28 U.S.C. §157(c)(2); in such event the proposed findings, conclusion and order or judgment shall become the findings, conclusions and order or judgment of the Bankruptcy Court as of the date of their original entry.

COMMENT TO DCt.LBR 9033-1: *Section 157c of Title 28 provides that a bankruptcy judge may try a "non-core proceeding" related to a case under Title 11 and submit proposed findings of fact and conclusions of law to the District Court. This rule sets forth the procedure for obtaining* de novo *review and the standards for such review. Note that paragraph (a) increases the time from 10 to 11 days.*